

JOEL D. LEIDERMAN, ESQ. on 09/28/2016

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW YORK
3 VICTOR CALLENDER, * CIVIL ACTION NO.
4 Plaintiff, * 1:15-CV-05813-AKH
5 vs. *
6 FORSTER & GARBUS, LLP and *
7 DISCOVER BANK, *
8 Defendants. *
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11 DEPOSITION OF
12 JOEL D. LEIDERMAN, ESQ.
13 COMMACK, NEW YORK
14 SEPTEMBER 28, 2016

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20 REPORTED BY: WANDA WILKINS, CSR NO. 30XI00117400
21 JOB NO. 139075

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Maxene Weinberg Agency

(800)-640-1949

JOEL D. LEIDERMAN, ESQ. on 09/28/2016

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4 VICTOR CALLENDER, CIVIL ACTION NO.
5 Plaintiff, *
6 vs. *
7 FORSTER & GARBUS, LLP and *
8 DISCOVER BANK, *
9 Defendants. *
10 ----- *
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12 Deposition of JOEL D. LEIDERMAN,
13 ESQ., taken on behalf of plaintiffs, at FORSTER
14 & GARBUS, LLP, 60 Vanderbilt Motor Parkway,
15 Commack, New York 11725, commencing at 11:00
16 a.m., on Wednesday, September 28, 2016, before
17 Wanda Wilkins, CSR No. 30XI00117400.
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A P P E A R A N C E S:

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3 LAW OFFICES OF AHMAD KESHAVARZ

4 Attorneys for Plaintiff

5 16 Court Street, 26th Floor

Brooklyn, New York 11241

6 (718) 522-7900

ahmad@newyorkconsumerattorney.com

7

8 BY: AHMAD KESHAVARZ, ESQ.

9

10 RIVKIN RADLER, LLP

11 Attorneys for Defendants

12 926 RXR Plaza

Uniondale, New York 11556-0926

13 (516)357-3000

carol.lastorino@rivkin.com

14

15 BY: CAROL A. LASTORINO, ESQ.

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ALSO PRESENT:

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MARK GARBUS, ESQ., FORSTER & GARBUS

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I N D E X

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3 WITNESS

4 JOEL D. LEIDERMAN, ESQ.

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1 INSTRUCTIONS NOT TO ANSWER

2 PAGE LINE

3 166 22

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5 INFORMATION REQUESTED

6 PAGE LINE

7 (None)

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1 J O E L D. L E I D E R M A N , residing at 60
2 Vanderbilt Motor Parkway, Commack, New York
3 11725, is duly sworn by a Notary Public of
4 the State of New Jersey and testifies under
5 oath as follows:

6

7 MR. KESHAVARZ: Let the court
8 reporter note that there is a witness
9 here who's going to be testifying later
10 today. Mr. Garbus?

11 MR. GARBUS: Yes, Garbus,
12 G-A-R-B-U-S .

13 MR. KESHAVARZ: I object to the
14 witness's appearance at the deposition of
15 the corporate representative for fear
16 that it may intentionally or
17 unintentionally affect the testimony of
18 Mr. Garbus and I'll ask that the witness
19 be excluded.

20 Will you consent to that?

21 MS. LASTORINO: No, I do not
22 consent. Mr. Garbus is permitted to be
23 here, under Local Civil Rule 30.3 of the
24 Southern District Court, which provides
25 that, "A witness or a potential witness

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1 in the action may attend the deposition
2 of a party or witness unless otherwise
3 ordered by the Court."

4 MR. KESHAVARZ: Other than to
5 affect Mr. Garbus's testimony, what
6 reason is he here for?

7 MS. LASTORINO: I don't need to
8 give you a reason other than he's
9 permitted to be here. He's here. If you
10 want to get the Court on the phone, get
11 Judge Hellerstein on the phone.

12 MR. KESHAVARZ: To make the record
13 clear, I'll object to Mr. Garbus's
14 testimony and recall the right to recall
15 him.

16 MS. LASTORINO: You have no basis
17 for that. So, let's get the Court on the
18 phone.

19 MR. KESHAVARZ: I also want to
20 raise the issue, since we're going to a
21 jury trial, the jury can weigh the
22 credibility of Mr. Garbus's affect -- the
23 credibility of Mr. Garbus's testimony,
24 based on the fact that he is listening to
25 the testimony of the corporate

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1 representative, Mr. Leiderman, over
2 plaintiff's objection.

3 BY MR. KESHAVARZ:

4 Q. Mr. Leiderman --

5 MS. LASTORINO: Excuse me. Hold
6 on one second.

7 MR. KESHAVARZ: Go ahead.

8 MS. LASTORINO: For what you said
9 before, let's get the Court on the phone.

10 MR. KESHAVARZ: Why?

11 MS. LASTORINO: Why shouldn't we?

12 MR. KESHAVARZ: I preserved my
13 objection.

14 MS. LASTORINO: He's not going to
15 be produced another time. So, why don't
16 we get Judge Hellerstein on the phone?

17 MR. KESHAVARZ: If I preserved the
18 objection. It's not a bridge we have to
19 cross now. It could be a bridge we can
20 cross later. I just want to preserve the
21 record.

22 Can we go off the record for a
23 second?

24 (Whereupon there is an
25 off-the-record discussion.)

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1 MS. LASTORINO: Are we back on the
2 record?

3 MR. KESHAVARZ: Yes, we're back on
4 the record.

5 MS. LASTORINO: I just want the
6 record to reflect that I suggested
7 calling the Court now to resolve this and
8 Mr. Keshavarz does not want to.

9 MR. KESHAVARZ: And so the record
10 is clear, I don't believe that I'm under
11 obligation to call the Court at this
12 time. The issue goes to two issues. One
13 goes to the credibility of Mr. Garbus.
14 So the jury can infer on the fact that
15 he's attending over plaintiff's
16 objection.

17 (Whereupon there is a brief
18 interruption.)

19 MR. KESHAVARZ: And two, I want to
20 raise the prospect of it being a basis
21 for recalling Mr. Garbus at a later time.
22 That's not an issue that I believe you
23 have to have the Court intervene on
24 because it hasn't been raised yet.

25 MS. LASTORINO: And again, we

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1 object to and we will not produce him
2 another time, so.

3 EXAMINATION

4 BY MR. KESHAVARZ:

5 Q. Mr. Leiderman, good morning?

6 A. Hi.

7 Q. Thanks for your time today. Have
8 you ever been known by any other name other than
9 Joel Leiderman?

10 A. No.

11 Q. Do you have a middle initial?

12 A. D as in David.

13 Q. What does D stand for?

14 A. David.

15 Q. In preparation for your deposition
16 today, did you review any documents?

17 A. Yes.

18 Q. What documents did you review?

19 A. I reviewed some letters, a copy of
20 a restraining notice, I reviewed some notes on
21 the file.

22 Q. Anything else?

23 A. Today?

24 Q. At any point.

25 A. You know, basically, the

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1 information that's been produced in discovery.

2 Q. Okay. Are any of the documents
3 that were reviewed in preparation of your
4 testimony a document that has not been produced
5 in discovery?

6 A. No.

7 Q. Okay. And what was the reason for
8 your reviewing those documents in preparation
9 for your testimony today?

10 A. Because I was being deposed.

11 Q. Did you speak with anyone --
12 without the content, did you speak with anyone
13 in preparation for your deposition today?

14 A. I spoke to Ms. Lastorino.

15 Q. And when was that?

16 A. I spoke with her this morning. I
17 spoke with her yesterday. I might have had a
18 conversation last week or two and I met with her
19 a couple of weeks ago.

20 Q. I understand. During the meetings
21 with Miss Lastorino --

22 Is it Miss or Ms.?

23 MS. LASTORINO: Ms. is fine.

24 Q. Ms. Lastorino -- was anybody else
25 present?

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1 A. Mr. Garbus was at the meeting at
2 her office.

3 Q. At any other times you spoke with
4 Ms. Lastorino, was there anyone else, other than
5 Mr. Garbus?

6 A. This morning, Mr. Forster stopped
7 in to say hello.

8 Q. Anyone else?

9 A. No.

10 Q. Okay. On the phone calls that you
11 were on with Ms. Lastorino, was anyone else on
12 the phone?

13 A. No.

14 Q. Okay. Other than reviewing the
15 documents you indicated, did you take any other
16 steps in preparation for your testimony today?

17 A. I asked some people in the office
18 certain things that I might have not been
19 completely familiar with. So, I asked some
20 people in the office.

21 Q. Who?

22 A. Karen Pizzimenti.

23 Q. Can you spell it?

24 A. P-I-Z-Z-I-M-E-N-T-I, I believe.

25 Q. Who else?

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1 A. Scott Miller.

2 Q. Scott Miller?

3 A. Scott Miller. Scott Miller.

4 Q. Yes, Miller. Anyone else?

5 A. Joe Durante.

6 Q. Anyone else?

7 A. Pat McDowell.

8 Q. Anyone else?

9 A. Candace Newman. That's probably

10 it.

11 Q. All right. And when did you speak

12 with these individuals?

13 A. Within the last week.

14 Q. Okay. Did you speak with them

15 separately?

16 A. Yes.

17 Q. Okay. How long did your meeting

18 with Lauren Pizzimenti last?

19 A. Karen.

20 Q. Karen Pizzimenti. How long did

21 that meeting last?

22 A. Five minutes on two different

23 occasions.

24 Q. And what is her role?

25 A. She works in the compliance

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1 department.

2 Q. And what is the compliance
3 department?

4 A. The compliance department is the
5 department of the firm that handles complaints
6 and other issues if a person seeks validation
7 the debt or disputes the debt, it will go to
8 people in the compliance department. They also
9 interact with clients, in terms of issues
10 involving consumers.

11 Q. Is she the head of the compliance
12 department?

13 A. No, she's not.

14 Q. And what did you speak with her
15 about?

16 A. I asked her -- there were certain
17 initials -- as we go through the notes, which I
18 assume we will be doing today -- there were
19 certain initials of people who handled the
20 account of Victor -- what is it? Victor
21 Callender? Vincent Callender?

22 MS. LASTORINO: Victor.

23 A. Victor Callender and I wasn't
24 quite sure of the names. Many of whom are not
25 here any longer, no longer employed by Forster

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1 and Garbus and so, I wanted to make sure that I
2 understood who those people were.

3 Q. Did you speak with Miss Pizzimenti
4 about anything else?

5 A. No.

6 Q. Who are those people, if you
7 recall, that Miss Pizzimenti said were in the
8 collection notes but you didn't recall the name
9 of?

10 A. Janelle Lewis, Shaheed Williams.
11 Let me think. I wanted to confirm who T.R. as
12 that's Theresa Rock but I knew that. I just
13 wanted confirmation of that. John Lane, Brianna
14 Erb, E-R-B. I forget -- her name is Sue --
15 something like Sueheidi Mejia (ph).

16 Q. Anyone else?

17 A. Not that I can remember. As we go
18 through the notes, I'll be glad to testify.

19 Q. So, the individuals you just
20 listed, those are all people who are involved
21 with the collection of the putative debt against
22 Mr. Callender?

23 A. They were involved with the
24 account of Victor Callender.

25 Q. And were they involved in the

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1 attempts to collect the account against Mr.

2 Callender?

3 A. Yes, I guess so.

4 Q. And the account you mean by
5 collecting on the vacated Judgment?

6 A. Well, yes.

7 Q. By "the account," do you mean
8 Forster & Garbus's attempts to collect on the
9 vacated Judgment?

10 MS. LASTORINO: Objection to form.

11 Q. You may answer.

12 A. Yes. However, we will get into
13 the issue of the vacated Judgment, I'm sure, in
14 later testimony.

15 Q. But I'm just trying to get --

16 A. Yes, is the answer.

17 Q. And it's normal to anticipate an
18 answer but for the court reporter, who is
19 scowling at me now, I need to make a clear
20 record. So please pause for a second. Let me
21 finish the question.

22 So, the question is when Forster &
23 Garbus says it is collecting the account, when
24 you say the words "account," you mean the
25 vacated Judgment as to Mr. Callender? Is that

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1 what you mean by "account"?

2 MS. LASTORINO: Again, objection
3 to form.

4 A. Yes.

5 Q. Thank you. And when was your
6 meeting with Karen Pizzimenti?

7 A. I don't know the date. Within the
8 last two weeks, on two occasions.

9 Q. When did you meet with Mr. Miller,
10 Scott Miller?

11 A. It was over the telephone.

12 Q. And how long did that call last,
13 approximately?

14 A. Thirty seconds.

15 Q. And what was said?

16 A. I don't even remember the question
17 I asked. It just had to do with something in
18 the notes that I wanted clarification on and
19 there were a few conversations, one or two.
20 Maybe more than one.

21 Q. And what is Mr. Miller's
22 involvement?

23 A. He's the director of collections.

24 Q. What does that mean?

25 A. He's in charge of the collection

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1 departments. So, the supervisors report to him,
2 supervisors of the various client units. He has
3 liaison with the clients, as well, client
4 meetings, which are primarily over the
5 telephone.

6 Q. Who is Joe Durante?

7 A. He works in the IT department.

8 Q. And when did you speak with him?

9 A. Yesterday.

10 Q. And how long was that
11 conversation?

12 A. Thirty seconds.

13 Q. And what was that?

14 A. We were trying to get some letters
15 that were produced yesterday by Ms. Lastorino.

16 Q. Do you know, were those letters
17 digitally scanned and Forster & Garbus --

18 A. No, they were not scanned.

19 Q. You have to wait until I finish
20 the question because she's scowling at me again.

21 So, you spoke with Mr. Durante
22 yesterday to get additional documents,
23 collection letters, sent to Mr. Callender that
24 your attorney produced yesterday. Is that
25 correct?

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1 A. Yes.

2 Q. And are you saying that those
3 letters were not digitally scanned copies?

4 A. That is correct.

5 Q. Were they recreated documents?

6 A. Yes.

7 Q. And how did you know to recreate
8 the documents in that manner?

9 A. When I was reviewing the notes and
10 I was not familiar -- and that may be one of the
11 reasons I called one of the persons on this
12 list. I don't remember who -- that these
13 letters were not scanned but they could be
14 digitally -- they could be reproduced based on
15 the electronic record; and so, in learning that,
16 then these letters that I would have testified
17 to and would testify to, as we go through the
18 notes, we now can actually and have provided the
19 copies to you, yesterday and this morning.

20 Q. Okay. How do you know that the
21 content of those letters that were produced
22 yesterday are the correct content of the letters
23 that were alleged to be sent by Forster & Garbus
24 to Mr. Callender?

25 A. I rely upon the integrity of our

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1 computer system and the business practices.

2 Q. So, these are form letters that
3 are -- these are form letters that Forster &
4 Garbus has that are merged with the data files
5 that Forster & Garbus has. Is that correct?

6 A. Yes, that's primarily how it's
7 done.

8 Q. So, each of the letters that were
9 produced yesterday, you have a template for each
10 of those letters?

11 A. There's a template for the
12 letters.

13 Q. And those are the letters -- those
14 are among the letters that Forster & Garbus
15 regularly use to collect debts. Is that
16 correct?

17 A. Yes, um-hum.

18 MR. KESHAVARZ: Thank you. Let's
19 go off the record.

20 (Whereupon there is an
21 off-the-record discussion.)

22 MR. KESHAVARZ: Can you read the
23 last question and answer, please?

24 (Whereupon the last question and
25 answer are read back by the reporter.)

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1 BY MR. KESHAVARZ:

2 Q. Let me pause for a second by going
3 over some of the ground rules about a
4 deposition. Have you ever had your deposition
5 taken before, sir?

6 A. Yes.

7 Q. Approximately how many times?

8 A. About five, six, something like
9 that.

10 Q. So, then you pretty much know how
11 it works, but if I ask you a question and you
12 don't understand, will you please ask me to
13 rephrase it?

14 A. I will.

15 Q. And if I ask you a question and
16 you do not ask me to rephrase it and you answer
17 it, is it reasonable for me to assume that you
18 understood the question.

19 A. I guess so.

20 Q. Okay. So, Pat McDallia (ph) --

21 A. Dowell.

22 Q. Dowell, McDowell. How long did
23 you speak with Pat McDowell?

24 A. Two minutes.

25 Q. And these were all conversations

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1 in preparation for your testimony?

2 A. Correct.

3 Q. And what was said?

4 A. To get the copies of these
5 letters. She was assisting in that.

6 Q. And by "those letters," you mean
7 the letters that were produced yesterday?

8 A. Correct, um-hum.

9 Q. And what is her role?

10 A. She's director of operations.

11 Q. And what is the role of the
12 director of operations?

13 A. She's in charge of general
14 operations of the firm, including client
15 relations regarding affidavits of service and
16 new referrals and referral issues and client
17 directives.

18 Q. What do you mean by "affidavits of
19 service issues"?

20 A. Affidavits of facts. I'm sorry.

21 Affidavits in support of the entry of judgment.

22 Did I say "affidavit of service"? Sorry.

23 Affidavits of facts securing information from
24 the client, allowing us to proceed with the
25 lawsuit and judgment.

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1 Q. Thank you. Now, there was -- the
2 last person was Candace?

3 A. Candace Newman.

4 Q. And how long did you speak with
5 Miss Newman for?

6 A. Also, a few minutes, yesterday.

7 Q. And what was the --

8 A. Same thing, trying to get the
9 letters.

10 Q. For the court reporter, what was
11 the discussion yesterday with Miss Newman?

12 A. With Miss Newman, again,
13 assisting -- I was trying to get them so I asked
14 various people because I didn't know who was
15 going to be available to do it, so.

16 Q. And what's her title?

17 A. I don't know her title. She's in
18 the auditing department. I don't know if she
19 has a title, per se. She's director of
20 auditing, if you want.

21 Q. Okay.

22 A. Assistant.

23 Q. So, what do you do, Mr. Leiderman?

24 A. Chief cook and bottle washer. I
25 get involved in compliance issues. I act as

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1 liaison with outside counsel, generally, on
2 FDCPA matters. I handle special projects for
3 the firm. I get involved with reviewing letters
4 and on the collection floor. Most of the
5 collectors or supervisors will come to me if
6 they have any questions or need direction on
7 things. If I need to review letters that need
8 to be sent, liaise with -- I handle problem
9 calls. You know, telephone calls if there are
10 people who need to speak to an attorney,
11 generally. I'm in the office every day. I
12 don't go to court. So, I'm available in the
13 firm to handle those kinds of issues.

14 Q. Are you one of the partners at the
15 firm?

16 A. I'm not a partner, no.

17 Q. Who are the partners at the firm?

18 A. Ronald Forster and Mark Garbus.

19 Q. Who sets the policies and
20 procedures for compliance with the FDCPA at
21 Forster & Garbus, if you know?

22 A. It would be the partners and, I
23 guess, myself, primarily.

24 Q. Anyone else?

25 A. In terms of setting the policies

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1 and the procedures, other people might write the
2 procedures but ultimately, it would be approved
3 by the partners.

4 Q. But the partners are the ones who
5 make the decision about what policies and
6 procedures are in place?

7 A. I guess, yes, um-hum.

8 Q. Are the partners the ones who are
9 in charge of making sure that there's compliance
10 with Forster & Garbus's policies for compliance
11 with the FDCPA?

12 A. Yes, and other persons, such as
13 myself and the compliance officer, Ann
14 Viseccchia, to implement the policies.

15 Q. What is Ann Viseccchia's title
16 then, please?

17 A. She's the manager or director --
18 I'm not sure of that title -- of the compliance
19 department.

20 Q. By the way, I never got this on
21 the record. You're the court representative for
22 Forster & Garbus today?

23 A. Yes.

24 Q. Okay. So, let me just ask you --
25 (Whereupon there is an

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1 interruption.)

2 Q. So, Forster and Garbus garnished
3 Mr. Callender's wages based on a vacated
4 Judgment. Is that correct?

5 MS. LASTORINO: Objection to form.

6 A. Yes. When the case came in to us
7 in 2009 -- it was referred to us in 2009 -- it
8 was a valid Judgment. That Judgment was valid
9 up until the time that Mr. Callender brought an
10 Order to Show Cause and successfully brought the
11 Judgment vacated. However, Forster & Garbus was
12 not aware of that until the time that Mr.
13 Callender's wages were garnished to the extent
14 of approximately \$210.00 and we received a
15 letter from -- I believe it was the Urban
16 Justice Center, who advised us, at that time,
17 that the Judgment, unbeknownst to us, had been
18 vacated; and at that time, within a few days
19 thereafter, moneys that had been detected,
20 including marshal's poundage were refunded to
21 Mr. Callender.

22 Q. Do you know if there were any fees
23 that were associated with the garnishment of Mr.
24 Callender's wages, based on a vacated Judgment,
25 that were not returned to Mr. Callender?

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1 A. No, I do not.

2 Q. Why -- I'm sorry. Is that the
3 reason why Forster & Garbus garnished my
4 client's wages, based on a vacated Judgment?
5 Were you satisfied that that's the reason?

6 MS. LASTORINO: Objection to form.

7 A. As far as Forster & Garbus knew,
8 it was a valid Judgment, and that's why we
9 garnished his salary.

10 Q. Okay. What meaningful attorney
11 review, if any, did Forster & Garbus undertake
12 prior to garnishing my client's wages?

13 A. Mr. Callender was notified on many
14 occasions of the involvement of our firm and
15 that a Judgment had been entered. Mr. Callender
16 did not do anything to advise this firm that the
17 Judgment had been vacated. In fact, he had made
18 a complaint to the Department of Consumer
19 Affairs. In that complaint, he alleged that he
20 had never had a Discover account, Discover card
21 account. Nevertheless, prior to that time, he
22 had already, with a Discover card account --
23 this particular account -- had gone to court and
24 had the Judgment vacated; but yet, in his
25 complaint to the Department of Consumer Affairs,

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1 he never once mentioned the Judgment. He never
2 once said anything about a judgment. He denied
3 that he had a Discover card. That account was
4 considered, therefore -- his complaint was
5 considered to be a fraud or false identity
6 claim, so that we ceased collection on it at
7 that time. We went back to the client. The
8 client investigated that. They were able to
9 manage the application and the signatures and
10 the addresses and the billing statements, et
11 cetera, and determined that it was an invalid
12 fraud. So, there was no knowledge at Forster &
13 Garbus that the Judgment had been vacated. The
14 notice to the -- the Order to Show Cause was not
15 served on Forster & Garbus, despite the fact
16 that Mr. Callender was aware, based on many
17 letters sent to him over the course of time,
18 between 2009 and the date the Judgment was
19 vacated. Never once notified us that he did not
20 owe the debt until he, you know, alleged same to
21 the Department of Consumer Affairs and never did
22 anything to serve us with the Order to Show
23 Cause, despite knowledge of the fact that our
24 client was trying to collect that Judgment.

25 Q. Anything else?

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1 A. No. At this point, that's my
2 answer.

3 Q. All right. But I just want to
4 make sure that the record is clear. Prior to
5 issuing -- prior to Forster & Garbus garnishing
6 my client's wages, based on a vacated Judgment,
7 what -- up top point, what meaningful attorney
8 review did Forster & Garbus take to determine
9 whether the Judgment it was executing on was
10 valid, when it issued the execution?

11 MS. LASTORINO: Objection to form.

12 You can answer.

13 A. When the Judgment was entered --
14 when the account was referred to us with the
15 Judgment, we sent a letter, pursuant to the Fair
16 Debt Collections Practices Act, identifying the
17 fact that there was a -- that there was a
18 Judgment and advising that this firm was now
19 seeking to collect that Judgment; and under the
20 FDCPA, the debt is assumed to be valid and the
21 Judgment is assumed to be valid unless the
22 consumer disputes it, which he did not do at
23 that time. Therefore, we proceed with the
24 assumption that the debt is valid. We follow up
25 with several letters in an attempt to contact

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the consumer to try to collect on it.

The question of meaningful involvement is an interesting issue on post-judgment cases. You seem to allege that the attorney has to be meaningfully involved in every, every aspect of that case. However, if you look at the history of meaningful involvement under the FDCPA, I believe it has to do more with the impression of a least sophisticated consumer. Least sophisticated consumer, okay -- if something comes out on attorney letterhead, there have been courts that have said that that raises the price of poker; and so, in New York, we have the Greco vs. Trauner case, which allows a disclaimer to be placed in that. But that's on pre-legal cases, pre-litigation cases. This is a judgment file. So, clearly, I think even the least sophisticated consumer would recognize that a letter from a law firm that says a Judgment has been entered -- well, the price of poker has already gone up. It went up when he was sued in 2005. Okay. He was aware of that Judgment on several occasions. So, in terms of attorney meaningful involvement, there's no obligation

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1 that we go forward, other than to seek to
2 collect what we consider to be a valid debt for
3 various reasons. We rely on the client that the
4 Judgment was entered. It was, in fact, a valid
5 Judgment at that time the case was referred to
6 us, in 2009. It was a valid Judgment in 2005,
7 when it was entered. It was a valid Judgment,
8 up until the court determined that it was not a
9 valid Judgment, based on an Order to Show Cause
10 which was not served upon Forster & Garbus and
11 that Forster & Garbus had no awareness of.

12 So, in terms of our involvement,
13 had Mr. Callender sought to contact our office
14 in such a way as to bring to our attention that
15 for some reason, this Judgment was not valid,
16 that would have been explored, but I don't see
17 that in anything that I reviewed. I don't see
18 it in the -- I don't see it in the service of
19 the Order to Show Cause, which was not served
20 upon Forster & Garbus, despite the fact that
21 Forster & Garbus had sent many and had many
22 communications to Mr. Callender when Mr.
23 Callender made his DCA complaint. He did not
24 say, "Oh, this Judgment is invalid. I have a
25 Judgment against me. Forster & Garbus is

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1 seeking to, you know, collect a judgment, which
2 is enforceable." That was not his complaint to
3 the DCA. His complaint to the DCA is "I didn't
4 have a Discover card."

5 Q. So, let me make sure if I
6 understand your -- you raise a lot of issues.
7 So, let's go through them.

8 A. Surely.

9 Q. And I thank you for that. I
10 appreciate it. One thing I'm trying to get
11 specifically, is it Forster & Garbus's position
12 that when it executes on someone's wages, based
13 on an alleged Judgment, is it Forster & Garbus's
14 position that it is not required to do a
15 meaningful attorney review of the facts and
16 circumstances of the consumer's account, the
17 alleged Judgment, prior to executing on those
18 wages?

19 A. No. There was a review done.
20 There's a review done by an attorney before the
21 execution is issued and an attorney reviews the
22 restraining notice; but it's based on
23 information that is retained in the file at that
24 time, such as, you know, a Judgment, Judgment
25 information. The restraining notice or income

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1 execution could not be issued if there was a
2 vacated Judgment because that Judgment and
3 information would be reviewed -- would be
4 removed from the computer file. So, it would be
5 impossible to produce a Judgment -- a
6 restraining notice or an income execution or a
7 post-judgment enforcement device. So, the
8 review is done based on the records that are
9 there.

10 As to whether or not there was a
11 bankruptcy, some of our clients do require
12 certain, what we call, "scrubs." Bankruptcy,
13 military, deceased and they require that at
14 various times; and over the years, that's
15 changed. So, in 2009, I can't tell you exactly
16 which clients and what that -- you know, who
17 required certain scrubs, but a lot of clients
18 today require scrubs. Not only upon the initial
19 referal, which is maybe what the procedure was
20 back in 2009, but now, they're required before
21 you enter the Judgment and before you seek to
22 execute on the Judgment. So, before doing so,
23 we will run another bankruptcy scrub to make
24 sure that the person didn't file bankruptcy in
25 the interim. We will do a military scrub to

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1 make sure the person is not in active military
2 service and we may do, in some cases, a decedent
3 scrub to make sure the person didn't die in the
4 interim.

5 Q. Did you do anything else?

6 A. Well, you know, we may review the
7 notes on the case, if there's a -- you know,
8 but --

9 Q. Anything else?

10 A. Well, you know, again, it would
11 have to be -- for an income execution, it would
12 have to be a place of employment that was --
13 where we believed the person works or for a
14 bank, a bank account.

15 Q. Anything else? Anyone else?

16 A. No, not that I can think of right
17 now.

18 MR. KESHAVARZ: Can you read my
19 last question back to me, please? Or two
20 questions back, I guess.

21 (Whereupon the referenced
22 questions are read back by the reporter.)

23 Q. Let me ask a narrower question,
24 more of a yes or no question.

25 Is it for Forster & Garbus's

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1 position that it is -- well, strike that.

2 Let me just mark this.

3 (Whereupon P-1, Income Execution,
4 is marked for identification.)

5 Q. So, before I go on to Exhibit 1,
6 is it Forster & Garbus's position that it is
7 required to do a meaningful attorney review
8 prior to the issuance of an income execution on
9 a putative judgment and everything that you just
10 talked about is the meaningful attorney review?

11 Is that what you mean?

12 A. More or less, yes.

13 Q. Is there anything about a
14 meaningful attorney review that Forster & Garbus
15 believes it should conduct that you haven't
16 discussed?

17 A. No.

18 Q. Is there -- I said "believes."
19 So, is there anything that Forster & Garbus
20 actually does to do a meaningful attorney review
21 other than what we've discussed?

22 A. I think I've answered it.

23 Q. That's it. Right?

24 A. Yes.

25 Q. Why does -- does Forster & Garbus

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1 have a different policy for a meaningful
2 attorney review to execute on judgments where
3 Forster & Garbus has obtained a judgment, as
4 opposed to it being an account where a prior law
5 firm had entered the Judgment?

6 MS. LASTORINO: Objection to form.

7 A. Okay. Over the years, we've
8 developed where judgments that are referred that
9 were entered by somebody else, we now make sure
10 that we have a copy of the actual Judgment, as
11 opposed to just relying upon client information
12 and we also check with the courts at the time of
13 referral to make sure that that was -- that the
14 Judgment, you know, is valid and hasn't been,
15 for example, vacated. We do that at the time of
16 referral. We don't do that subsequently, other
17 than the meaningful review of the file that I
18 described before. So, there's no difference,
19 other than the referral period. Once the
20 Judgment has been referred to us and we verify
21 that, we do the same steps, whether it was a
22 Judgment entered by Forster & Garbus or a
23 Judgment entered by another firm that Forster &
24 Garbus took over.

25 Q. And when Forster & Garbus obtained

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1 the judgment account from Discover as to Mr.
2 Callender, are you saying that the Judgment had
3 not, at that point, been vacated?

4 A. That is correct, in 2009. I
5 believe the account was referred in December of
6 2009. That was a valid Judgment. That is
7 correct, and we also, approximately a month
8 later, sent to Mr. Callender a letter advising
9 of our involvement in the account; that we
10 were -- that a Judgment had been entered. That
11 letter was sent and was not responded to by Mr.
12 Callender. Therefore, under the FDCPA, we
13 believe that is states that we may assume that
14 the debt is valid.

15 Q. You said -- correct me if I'm
16 wrong. You said that there is a change in the
17 policy in terms of judgment accounts Forster &
18 Garbus gets for execution, where Forster &
19 Garbus was not the attorney getting the
20 Judgment. Are you saying that there was a
21 change at Forster & Garbus's policy as to how to
22 treat those accounts? Is that right?

23 A. We do more -- yes, in a sense,
24 yes, um-hum.

25 Q. When did that change happen?

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1 A. It started in around November
2 2014, when we started to make some of these
3 changes.

4 Q. What was the impetus for making
5 these changes?

6 A. Just probably better practice that
7 perhaps there were some cases that came out that
8 we reviewed. I don't really remember the
9 impetus of it but, you know, we started to do
10 that.

11 Q. Is one of the reasons that Forster
12 & Garbus changed it's policy because it was sued
13 for violating the FDCPA for executing on vacated
14 judgments?

15 MS. LASTORINO: Objection to form.

16 A. I'm not sure. As far as I know,
17 there was one other case, which you're familiar
18 with, that involved that issue. I don't
19 remember the date of that case. If that was
20 around the time you're alleging, then, yes, that
21 might have been the impetus; but other than that
22 case, I don't know of any other cases where
23 there's been an FDCPA alleged violation or even
24 any knowledge of a Judgment having been vacated
25 without our knowledge and then we proceeded to

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1 try to collect on it. So, I understand that you
2 may be trying to make this an issue of, "Oh, you
3 know, there are so many vacated judgments that
4 we're seeking to execute on," but, you know,
5 that's not it. So, you know, we always try to
6 better our practice.

7 I was present in a commercial
8 lawyers conference for five years. We always
9 try to do the best we can and always try to
10 advise our members to keep up with the law and
11 to do things, you know, to -- because there are
12 changes in the law all the time, in the FDCPA.
13 There are decision that come up all the time,
14 and you think you're doing something right and
15 all of a sudden, a decision comes out and now,
16 all of a sudden, the practice that everybody's
17 been doing for years and years and years, the
18 Court says, "Oh, you can't do that anymore."
19 So, we try to adapt our practice to that and
20 then we get sued because now, this new practice
21 is challenged by someone else who's saying,
22 "That's not it." So, we try to keep up.

23 So, if it was the Francis case,
24 which is the case that I think you're alluding
25 to, if that was around November of 2014, then

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1 yes, that would have been the impetus for
2 implementing that procedure.

3 Q. Just so the record is clear, the
4 Francis case was a lawsuit brought by my office
5 against Forster & Garbus and others for Forster
6 & Garbus executing on a vacated Judgment.

7 A. That is correct, um-hum.

8 Q. Thank you. Other than this case,
9 Mr. Callender's and Mr. Francis's case, has
10 Forster & Garbus ever been sued for collecting
11 on a vacated Judgment?

12 MS. LASTORINO: Objection but you
13 can answer.

14 A. Not that I'm aware of.

15 Q. But you're the person in charge
16 with FDCPA clients --

17 A. Yes.

18 Q. Just so the court record is clear,
19 you're the person in charge of FDCPA compliance
20 at Forster & Garbus. Is that correct?

21 A. Yes.

22 Q. You are the main person at Forster
23 & Garbus who gets involved in FDCPA suits when
24 Forster & Garbus is sued. Correct?

25 A. Yes.

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1 Q. So, if there was another lawsuit
2 against Forster & Garbus for violating -- for
3 executing on a vacated Judgment, you would know
4 that?

5 A. I believe so.

6 Q. And so the record is clear, there
7 are no other instances where Forster & Garbus
8 was sued for collecting on a vacated Judgment
9 other than Mr. Francis and Mr. Callender?

10 A. As far as I remember, no.

11 Q. I'm just looking at a copy of
12 Francis's complaint. We can print it out if you
13 want, but the signature is dated, by my office,
14 June 26, 2015. So, this new policy, it did
15 not -- you did not take this new policy of
16 checking as to the validity of judgment at the
17 time date of assignment, you didn't have that
18 changed before November 26, 2015?

19 A. I said '14. We changed it in '14.
20 We started changing in '14.

21 Q. But the Francis lawsuit was filed
22 in June 2015.

23 A. But the referral might have been
24 before that.

25 Q. What do you mean that the

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1 referral --

2 A. The referral of the account. I
3 don't know the fact -- I don't remember the fact
4 pattern of it, okay, but it had a different fact
5 pattern than in the Callender case, if I recall.
6 It had something to do with a judgment that had
7 been recalled and then reassigned. So, there
8 may have been some different factors in there.

9 Q. All right. Let me show you what's
10 been previously marked as Plaintiff's Exhibit 1.
11 Tell me if you recognize that document?

12 A. That's an income execution that
13 was issued by Forster & Garbus in the matter of
14 Discover Bank --

15 MS. LASTORINO: Do you have
16 another copy?

17 A. -- Discover Bank versus Victor
18 Callender that was issued by Forster & Garbus.

19 Q. When is that income execution
20 dated?

21 A. 12/3 of '14.

22 Q. Do you have any reason to believe
23 that it wasn't signed on that date?

24 A. No.

25 Q. So, we've gone back and forth

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1 about when this change in policy was. Was
2 Forster & Garbus's change in policy that we
3 discussed before or after the signing of the
4 income execution that's Exhibit 1?

5 A. Well, I said there were policy
6 change. I didn't say exactly all of the policy
7 changes, but we started to verify judgments upon
8 referal of accounts, as I said, on or about
9 November of '14, I believe is when we started to
10 implement that, trying to get copies of the
11 Judgment. So that policy would have been a few
12 weeks before the date of this, if it was
13 implemented in November of '14. Of course, this
14 account was referred in December of 2009. So
15 that policy would not have applied to this
16 account.

17 Q. So, the policy was only applied to
18 accounts that were -- judgment accounts that
19 were forwarded to Forster & Garbus after
20 November of 2014. Correct?

21 A. Yes.

22 Q. So, if there was a judgment
23 account that was forwarded to Forster & Garbus
24 before November of 2014, even if you're
25 executing on that Judgment even today, are you

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1 saying you would not check -- well, strike that.
2 Let me just make sure I understand what the
3 policy change was.

4 You're saying beginning November
5 2014, Forster & Garbus's policy was to get a
6 copy of the putative judgment from the judgment
7 creditor on the date of the assignment of the
8 Judgment of account to Forster & Garbus?

9 A. Correct. And would not work the
10 account until we got a copy and a judgment
11 account might be referred to us but if the
12 client didn't provide the Judgment for three
13 months, no communication was made with the
14 consumer, you know, until that time, until we
15 got a copy of the Judgment.

16 Q. And how would you obtain a copy of
17 the Judgment?

18 A. We would either ask the client for
19 it or in some cases, we would go to the Court
20 and try to obtain a copy ourselves or perhaps if
21 there was another attorney, you know, prior to
22 us, you know, maybe get it from his office, but
23 we would try to secure a copy of the Judgment
24 and confirm.

25 Q. Okay. The other change in policy,

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1 other than getting a copy of the Judgment, what
2 was the other change in the policy?

3 A. Well, we started to -- and this is
4 more recently and probably prompted by your
5 lawsuit, okay, was to now not only get a copy of
6 the Judgment but to also verify at the time of
7 referal that that Judgment was still valid; and
8 we do that by contacting -- by checking eCourts
9 and by contacting the courts directly. We don't
10 just do eCourts. We also go on the courts'
11 websites or call the court clerks.

12 Q. But when you said you would check
13 eCourts or the court file, you said that was a
14 policy that was after November of 2014? Is that
15 right?

16 A. Yes, um-hum.

17 Q. When did Forster & Garbus begin
18 checking eCourts at the time of the referal of
19 an alleged judgment account to determine whether
20 there's been an Order to Show Cause to vacate
21 that Judgment?

22 A. I'm not sure of the exact date.
23 It would be probably the latter part of 2015, or
24 the beginning of 2016.

25 Q. So, this change in policy would

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1 only be at the time of referral? It wouldn't
2 apply to judgment accounts that were transferred
3 prior -- that were previously transferred for
4 collection?

5 A. Right, that is correct.

6 Q. Why not?

7 A. Because I don't think there's a
8 duty for us to do so. If you look at, I
9 believe, two instances of cases where this came
10 about and yet, you know, the number of judgments
11 could be in the thousands of these types of
12 cases, several thousand a year. Okay. I don't
13 think it's a required business practice or
14 required of the firm to go and check on every
15 single case before we do the income execution of
16 thousands of judgments where one or two might
17 result in this situation.

18 Secondly, okay, we have also taken
19 the practice of now filing substitutions of
20 attorneys or notices of appearance so that, you
21 know -- and the -- we also, you know, again,
22 when we get a judgment, the income execution or
23 bank restraints is not the first notice that
24 this person is getting. So, there's requested
25 communication from the consumer with us. Again,

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1 when we send out the first letter, the first
2 letter says, "If you dispute the validity of
3 this debt, you know, you can do so and we'll
4 provide you with a copy of the Judgment, if you,
5 you know, want." If the consumer responds,
6 then, of course, we will do so. If he doesn't
7 respond, again, we assume the Judgment is valid.

8 Q. Let's follow up on that last
9 point. So, are you saying it's Forster &
10 Garbus's position that if it sends a consumer a
11 notice that they have 30 days to dispute the
12 validity of the debt. That's called, generally,
13 a G Notice. Is that right?

14 A. Generally, right, 1692.

15 Q. So, let's just call that the --

16 A. Validation notice.

17 Q. The 30-day validation notice. Is
18 it Forster & Garbus's position that if it sends
19 out a 30-day validation notice, regarding the
20 collection of a Judgment where that Judgment was
21 transferred from another law firm, is it Forster
22 & Garbus's position that it is not required to
23 take any steps to determine the validity of the
24 Judgment?

25 MS. LASTORINO: Objection to form.

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1 A. Well, again, I already testified
2 to that: That, one, we have a right to rely on
3 our client's information that there's a valid
4 Judgment; and, two, as I stated, we do obtain
5 copies of the Judgment; and, three, as we can
6 assume, after a 30-day period, that the Judgment
7 is valid and so without anything more, I think
8 it's proper for us to assume that the Judgment
9 is valid, unless brought to our attention in
10 some way that the Judgment is not valid. Now,
11 there are situations where people will contact
12 us and say, "I didn't know about the Judgment
13 and I wasn't served properly." That's a
14 different issue. That's a separate issue, you
15 know, and we'll respond to that accordingly.
16 That would be a dispute and handled in a way
17 that is -- you know, we'll follow the dispute
18 rules.

19 Q. And the dispute rules are?

20 A. Well, we would send it to the
21 compliance department. We would research the
22 case, check the -- you know, check the affidavit
23 of service, ask for information about the
24 service, you know: Was the person living at
25 that address at that time; and then, we will

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1 determine the course of action. Maybe try to
2 settle the case. Some people are willing to
3 settle but they're not aware of the Judgment.
4 Doesn't mean they don't own the debt. So that
5 we may resolve the issue with the debtor at that
6 point.

7 Q. Tell me if this is a true
8 statement or not. It would take about 30
9 seconds or less to check eCourts to determine if
10 Mr. Callender's -- Mr. Callender had vacated his
11 Judgment?

12 MS. LASTORINO: Objection.

13 A. I don't know. Maybe a little
14 longer.

15 Q. A minute?

16 A. Maybe, two minutes.

17 Q. Two minutes. And eCourts is the
18 courts' web system that, for the counties in New
19 York and many of the populated counties in New
20 York State, they list what actions are taken in
21 a collection lawsuit. Correct?

22 MS. LASTORINO: Objection.

23 A. In all lawsuits.

24 Q. In all lawsuits. It will tell you
25 the date that a lawsuit has been filed.

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1 Correct?

2 A. I believe so.

3 Q. It will tell you the disposition
4 date. Correct?

5 A. Yes.

6 Q. It will tell you if there's been
7 an Order to Show Cause to Vacate the Judgment
8 that's been filed. Correct?

9 A. I'm not sure if it's on all cases.
10 Disposition date, in some cases, if you go on to
11 a basic screen and you look at the disposition
12 date, it doesn't tell you what happened; but
13 there is -- and I don't know if it's in all, you
14 know, CALA courts, but they report, you know,
15 the motion practice. It may very well be, but
16 again, as I've said before, if there are 3500
17 judgments -- well, actually, there are more.
18 Because if you're imposing this on not just
19 judgments such as in Mr. Callender's case,
20 referred by other clients, but to say that we
21 would have to judge -- do it on every case in
22 our office. I think it's unreasonable. I don't
23 think it's a reasonable and required practice.

24 Q. When you said "3500," what did you
25 mean?

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1 A. Well, I'm saying if there were
2 3500 judgments referred in a year to us, that
3 kind of classification.

4 Q. Is that accurate?

5 A. For -- yeah, that may be for at
6 least, you know, recent years.

7 Q. Okay. And so you're --

8 A. And that's a small portion. I'll
9 just go on to say that's a small portion of, you
10 know, tele-referrals.

11 Q. So, for this 3500 a year, that
12 would be a new judgment account?

13 A. Judgments that were referred by --
14 this have been obtained by other parties.

15 Q. I just want to make sure I'm
16 clear. Those would be new judgment accounts --
17 strike that.

18 I'm just trying to understand your
19 testimony. Are you saying that there would be,
20 roughly speaking, about 3500 new judgment
21 accounts sent to Forster & Garbus each year
22 where Forster & Garbus was not the firm that
23 obtained the Judgment? Correct?

24 A. Yes.

25 Q. Okay. So, right now, there would

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1 be tens of thousands of judgment account files
2 that Forster & Garbus is collecting on, where
3 Forster & Garbus did not obtain the Judgment?
4 Is that accurate?

5 MS. LASTORINO: Objection.

6 A. I would say no, because many of
7 those judgments would have been closed out and
8 everything like that. So, we're not talking
9 about that kind of volume.

10 Q. Just roughly, about how many
11 judgment accounts does Forster & Garbus collect
12 on in a year where Forster & Garbus is not the
13 firm that obtained the Judgment?

14 MS. LASTORINO: Objection.

15 A. I really don't know the number on
16 that, you know. There would have to be several
17 thousands of them -- I'll admit to that -- that
18 are still with the firm. It's doesn't mean
19 we're collecting -- when you say, "collecting on
20 it," it doesn't mean we're collecting money on
21 them. They're active in our office -- still
22 active in our office. Doesn't mean that we're
23 collecting any money or, you know, doing
24 anything with them. They're just there.

25 Q. But generally speaking, your job

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1 at Forster & Garbus in collecting judgments is
2 to, you know, collect them, to execute on
3 them --

4 A. Yes, but only a very small portion
5 of judgments are ever collected.

6 Q. By "collected," you mean,
7 actually, money received?

8 A. Correct.

9 Q. But there's a larger number where
10 you're trying to -- I mean -- strike that.

11 For all the judgment accounts,
12 you're trying to obtain money to collect on the
13 judgments. Right?

14 A. Yes.

15 Q. And for all those accounts, when
16 you say you're trying to collect on it, one
17 common way is to issue bank restraints or income
18 executions. Right?

19 A. That is a way to do it, but it's
20 not done willy-nilly, you know.

21 Q. But if Forster & Garbus has a
22 basis to think that they know whether the
23 consumer has a job, or banks, it's Forster &
24 Garbus's normal course, in collecting judgments,
25 to issue an income execution or bank restraint.

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1 Right?

2 A. Yes.

3 Q. Okay. And you're saying because
4 of the several thousand judgment accounts that
5 Forster & Garbus is collecting on, where Forster
6 & Garbus did not obtain the Judgment, because
7 there's so many judgments, are you saying that's
8 why it's not reasonable for Forster & Garbus to
9 have to check eCourts each time it is forwarded
10 an account?

11 MS. LASTORINO: Objection. Judge
12 Hellerstein ruled --

13 MR. KESHAVARZ: Wait, wait, wait,
14 no. He opened the door.

15 You can answer the question.

16 MS. LASTORINO: Judge Hellerstein
17 ruled that you're limited to due
18 diligence in this action.

19 MR. KESHAVARZ: He answered the
20 question before. I'm just trying to make
21 sure I understand it. He answered the
22 question. So, I'm just trying to nail it
23 down.

24 MS. LASTORINO: Your scope of
25 questioning is not permitted by the

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1 Judge's order.

2 MR. KESHAVARZ: I'm just trying to
3 nail down what your testimony is. We can
4 reread the transcript, if you want. We
5 can go through all of that.

6 MS. LASTORINO: And I'm telling
7 that you're asking for things --

8 MR. KESHAVARZ: Reread the
9 transcript.

10 MS. LASTORINO: -- that are
11 disproportionate pursuant to the Judge's
12 order dated September 22, 2016, which
13 says, "Plaintiff should focus on what the
14 defendant did by way of due diligence in
15 this case, in the Callender matter." So,
16 you can go to another question.

17 MS. LASTORINO: Can you read back
18 the last three questions and the last
19 three answers? We can be here all day,
20 if you'd like. Go ahead.

21 (Whereupon the referenced
22 questions and answers are read back by
23 the reporter.)

24 MS. LASTORINO: I have to make a
25 call to the office. I'll be a second.

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1 MR. KESHAVARZ: Actually, I'd like
2 to stay on the record, then. I don't
3 want the witness to leave.

4 (Whereupon there's a brief
5 recess.)

6 BY MR. KESHAVARZ:

7 Q. We talked a minute ago about
8 relying on what your client tells you as a basis
9 of a meaningful attorney review to collect on a
10 Judgment. Do you remember that?

11 A. Yes.

12 Q. Now, most of the collection
13 agreements by which Forster & Garbus collects,
14 the typical agreement disclaims any warranties
15 about the accuracy of the information. Correct?

16 MS. LASTORINO: Objection. I'm
17 sorry. Can you just read that back?

18 (Whereupon the last question is
19 read back by the reporter.)

20 MS. LASTORINO: I don't understand
21 your question.

Do you understand his question.

23 MR. KESHAVARZ: Well, don't -- if
24 you have a question about -- and I know
25 you're not intending to do this. I'm

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1 just saying if you have a question about
2 the clarity of a question, then the
3 proper response is an objection to the
4 form of the question.

5 MS. LASTORINO: Well, I did object
6 to it. So, I'm just asking him if he's
7 okay with the question.

8 MR. KESHAVARZ: Well, that's
9 where I think -- and I know you're not
10 intending to do this, but I think the
11 effect of that, even unintentional, would
12 be to affect the testimony of anyone in
13 that position.

14 MS. LASTORINO: It's not, Ahmad,
15 please.

16 Q. But do you understand my question,
17 sir?

18 A. I understand it.

19 Q. And what's your answer?

20 A. My answer is I'm not familiar with
21 the contract provisions of all the clients. I'm
22 not familiar with that being a clause that I
23 focused in on and I think that in terms of
24 whether there's a clause or not, there's quite
25 often that there is terminology such as that,

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1 and I'm not saying there is in the contracts.
2 I'm not saying -- your representation that "most
3 of the contracts," I wouldn't concede to that.
4 I have no idea whether most of them or any of
5 them have that clause in it. Nevertheless, if
6 it did have that clause, it doesn't mean that
7 the information is not reliable; and when you
8 have clients who provide us with reliable
9 information -- and Discover is one of the best
10 clients in that regard -- that there would be
11 any reason not to believe the accuracy of the
12 information. So, whether there's a clause like
13 that makes no difference as to whether or not
14 the information is accurate.

15 Q. So, whether the debt collector
16 says -- well, if that's the answer to your
17 question, that's the answer to your question.

18 For collection on Discover
19 accounts, do you know, one way or the other,
20 whether Discover disclaims warranties about the
21 accuracy of the information?

22 A. I have no idea.

23 Q. But even if Forster -- strike
24 that.

25 Are you saying that even if

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1 Discover disclaimed the accuracy of the
2 information and said that it's the duty of the
3 attorney to independently make a determination
4 as to the validity of a Judgment to collect, are
5 you saying that even if there was such a clause,
6 you're entitled to rely on the client to
7 determine whether the Judgment is valid --

8 MS. LASTORINO: Objection to form.

9 Q. -- at the time of execution?

10 MS. LASTORINO: Objection to form.

11 A. What difference does it make --
12 why did you say, "at the time of execution"?
13 Execution can come many years after the
14 referral.

15 Q. All right. So, let me rephrase
16 that. Is it your position that if Discover --
17 really any judgment creditor -- sends you a
18 Judgment to be collected on, if their agreement
19 explicitly disclaims the accuracy of the
20 information, and says "that's the duty of the
21 law firm to independently determine the validity
22 of the accounts," are you saying that it would
23 not be Forster & Garbus's duty to independently
24 select the validity of the accounts?

25 MS. LASTORINO: Objection to form.

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1 A. I think there's very many factors
2 that go into that. I think we can rely on the
3 information of the client, despite any
4 representation that you're stating, as well as
5 the fact that we communicate with the consumer
6 and ask him to, you know, dispute the debt or to
7 seek confirmation of the debt; and if he doesn't
8 do so, that becomes an assumption and it's an
9 assumption that the debt is valid and that the
10 Judgment is valid.

11 Q. And because of that assumption --

12 A. And as I said, also, we do obtain
13 copies of the judgments and so --

14 Q. Well, if the Judgment has been
15 vacated, there would, obviously, by definition,
16 always be a Judgment. Right?

17 MS. LASTORINO: Objection.

18 A. Again, that's a different
19 scenario. That's not talking about the Judgment
20 at the time of referal. So, subsequently, to me
21 this is a Wernoff (ph), this case, Callender.

22 Q. Wernoff, Callender and Mr. Francis
23 is another instance of that happening?

24 A. Right.

25 Q. And Miss Brown is another instance

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1 where Forster & Garbus was sued for collecting
2 on a vacated Judgment. Right?

3 A. I don't remember that one.

4 Q. Didn't it settle a few months ago?

5 A. I'm not familiar with that.

6 Q. Were you at a settlement
7 conference?

8 A. Oh, Miss Brown?

9 Q. Yeah.

10 A. Who is Miss Brown? I don't
11 remember her.

12 Q. Lashawn Brown?

13 A. Lashawn Brown. Again, I have to
14 recollect.

15 Q. Let me ask you this: Does Forster
16 & Garbus keep track of the times that it's
17 alleged to be executed on a vacated Judgment?

18 MS. LASTORINO: Objection to form.

19 A. I don't -- I wouldn't say there's
20 a list, okay, but if it becomes an issue, it's
21 something that's brought to our attention.

22 Q. What do you mean "becomes an
23 issue"?

24 A. Well, in other words, a lawsuit or
25 a debtor brings it to our attention.

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1 Q. But my question is, specifically,
2 does Forster & Garbus track the number of times
3 that it is alleged to be collecting on a vacated
4 Judgment?

5 A. No, not per se.

6 Q. It doesn't track the number of
7 times Forster & Garbus has been sued for
8 collecting on a vacated Judgment. Correct?

9 A. Not particularly for that
10 instance, no.

11 Q. It doesn't keep track of letters
12 from consumers where they allege that a Judgment
13 has been vacated? Forster & Garbus doesn't
14 collect that. Correct?

15 A. No. Well, there's general
16 categories but I don't believe so, no, not
17 separately for that.

18 Q. And Forster & Garbus doesn't keep
19 track of even when consumers' attorneys contact
20 them, like the Urban Justice Center did here,
21 and tell Forster & Garbus that they're
22 collecting on a vacated Judgment. Forster &
23 Garbus doesn't track the number of times it gets
24 those complaints. Right?

25 MS. LASTORINO: Objection to form.

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1 A. Not that I know of.

2 Q. Why not?

3 A. Because I don't think -- I think
4 it's a rare instance and so that it's not
5 something that we would keep track of, but we
6 would pay attention if we saw it as an issue.
7 So, for example, one or two cases a year, if it
8 did come up -- and it's not even that many --
9 then I don't think we would set up a policy to
10 track that type of issue because it's not an
11 issue that's come to our attention as being an
12 issue, a real issue.

13 Q. Does Forster & Garbus have a
14 specific policy to avoid collecting on vacated
15 judgments?

16 A. We would never collect on a
17 vacated Judgment if we knew it had been vacated.
18 That would be our policy.

19 Q. Is there any other policy that
20 Forster & Garbus has to avoid collecting on
21 vacated judgments, other than what you just
22 said?

23 A. No. My prior testimony speaks for
24 itself on that issue.

25 MR. KESHAVARZ: Can you mark this,

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1 please.

2 (Whereupon P-2, eCourts Printout,
3 is marked for identification.)

4 Q. How long does it take, generally
5 speaking, for Forster & Garbus to find whether
6 or not a consumer is employed or has a bank
7 account for Forster & Garbus to issue a bank
8 restraint or a wage garnishment?

9 A. No set time. I have no idea. It
10 would be -- in some cases, you find it, you know
11 within a few months of a referral, you know, or
12 of a Judgment and in some cases, it could be
13 years.

14 Q. And what steps does Forster &
15 Garbus take to determine if there's a place of
16 employment or bank account to execute upon?

17 A. We use certain services that are
18 provided to locate jobs and things like that in
19 banks.

20 Q. And once that is located, how long
21 does it take for the income execution or the
22 bank restraint to go out?

23 A. Probably fairly quickly, you know,
24 within a few weeks.

25 Q. And how long does it take to

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1 prepare and issue those income executions or
2 bank restraints?

3 A. Once they are requested, they're
4 produced pretty much, you know, a day later or
5 same day -- a day later or whatever.

6 Q. About how long does it take, just
7 roughly speaking, to do that? Like for Mr.
8 Callender, for example. They issued an income
9 execution. How long did it take, typically, for
10 Forster & Garbus to be able to issue an income
11 execution or bank restraint?

12 A. I don't understand the question.

13 Q. So, you have the system in place
14 where you find out if there's a bank account.
15 Right? To be executed upon. Right? You have
16 to verbalize your answer.

17 A. Yes.

18 Q. And there's a process to determine
19 whether the consumer has a place of employment
20 to garnish wages. Correct?

21 A. Yes.

22 Q. And once that information is
23 obtained, what is the next step in collecting
24 that Judgment?

25 A. I believe it would first be

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1 reviewed by a supervisor, you know, to say,
2 "okay," you know, confirm to issue the income
3 execution and that would then be put through for
4 processing to the data processing area, which
5 would produce the actual document, which would
6 then go to the attorney for review; and then
7 issue to the judgment units to send out to the
8 enforcement officer, the bank.

9 Q. When you say it's forwarded to the
10 attorney for review, what review do you know the
11 attorney is supposed to take?

12 A. They would look at the Judgment
13 and they would, you know, see the information
14 that's on the Judgment. There's a job. There's
15 a Judgment date. There's Judgment information.
16 Perhaps look at the notes on the account and
17 then proceed with the signing of the execution.

18 Q. So, all the steps that the
19 attorney would take in this attorney review you
20 just talked about, all the steps the attorney
21 would take is just to determine that they're
22 executing on the right bank account or executing
23 on the right employer. Correct?

24 A. Well, yes.

25 Q. They're not checking anything

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1 else. Correct?

2 A. They might. You know, I can't
3 speak for the individuals as to everything they
4 may look at, but the answer is, generally, that
5 would be the information. Again, the Judgment
6 itself, the document itself could not be
7 produced even if there was no judgment
8 information, you know. So that they would rely
9 on the integrity of the system to then issue the
10 -- to sign off on the execution.

11 Q. But they would only look to see if
12 there was a judgment for accounts that are --
13 new accounts that are placed for collection on
14 judgments after November 2014. Correct?

15 A. I'm sorry. I misunderstood your
16 question.

17 Q. This issue about checking
18 judgments, that would only be checking to see if
19 there's a Judgment in the file at the date of
20 the placing of the account after November 2014,
21 where the placement was after November 2014.
22 Correct?

23 A. Well, it doesn't mean we didn't
24 have copies of Judgment prior to 2014. We're
25 talking, you know, a policy change but that

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1 doesn't mean that on many cases prior to 2014,
2 we did not obtain a copy and did not have a copy
3 of the Judgment. I would say prior to 2014, in
4 the majority of cases, we did have copies of the
5 judgments.

6 Q. How do you know that?

7 A. Because I've been here since 2008,
8 and based on the clients, I believe we had, you
9 know, copies of judgments.

10 Q. So, how long does that whole
11 process take, the issue the Judgment? Ten
12 minutes? An hour?

13 A. What do you mean "issue the
14 Judgment"? I don't understand.

15 Q. From the date that -- the time
16 period to find the account, the bank account, to
17 find the employer, for it to go through this
18 supervisor. What does the supervisor do?

19 A. Well, the supervisor would look at
20 the information and say, "Okay. Issue the
21 income execution or the restraining notice." So
22 they would review the account at that point.

23 Q. And by "okay," you mean the
24 likelihood of it being profitable for Forster &
25 Garbus to be able do that?

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1 A. I wouldn't comment on that in that
2 way at all.

3 Q. How would you comment on it?

4 A. I would comment on it to make sure
5 that -- to look at the account to see if it's
6 appropriate to issue an income execution or
7 restraining notice, based on other factors, such
8 as, as discussed before. It was a scrub done.
9 Were there any disputes relative to the finding
10 of that asset that would prevent the issuance of
11 income execution or restraining notice. So,
12 they would do that review and if it was clean,
13 there's no military issue, that the person was
14 in the active military, no bankruptcy, no
15 deceased, nothing to indicate, you know,
16 something that would prevent, stop it from
17 going, you know, such as a recent dispute. For
18 example, let's say we found a bankruptcy and
19 somebody, just the day before, wrote a letter
20 saying "I wasn't served with the summons." They
21 may not issue the restraint.

22 Q. Do you keep track to determine if
23 that happens that the consumer complains about
24 service prior to issuing income execution or
25 wage garnishment?

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1 A. I don't keep track of that but the
2 compliance department would keep track of any --
3 because if that was an issue then it would go to
4 the compliance department and the compliance
5 department would then respond to that dispute
6 and would stop the -- you know, no income
7 execution would go out at that point. If we had
8 an income execution that had been issued, let's
9 say, first stage and the person disputes
10 service, we won't send it second stage. It
11 would go to the compliance department.

12 Q. What's the second stage?

13 A. The second-stage income execution
14 is the execution served by the enforcement
15 officer on the job. The first stage is served
16 upon the individual and that gives the
17 individual an opportunity to dispute that income
18 execution and dispute, you know, if he has a
19 dispute regarding the Judgment prior to the
20 service upon the job. So, in Mr. Callender's
21 case, for example, presumably he was served with
22 the first-stage income execution by the City
23 marshal and yet, failed to respond to the City
24 marshal by saying, "What's this Judgment? This
25 Judgment was vacated," et cetera. He failed to

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1 do anything like that, which resulted in then
2 the issuance of the second-stage income
3 execution, the second-stage income execution
4 upon this job, in which approximately \$210.00
5 was deducted. Had he notified the sheriff or
6 the -- the marshal, in this case, at first
7 stage, that he was disputing the Judgment, he
8 never knew about it, that would have stopped the
9 execution, gone to the compliance department for
10 investigation. He didn't do that in this case.
11 He failed to mitigate any of his damages, or
12 take steps to notify us that the Judgment had
13 been vacated.

14 Q. So, in that respect, you're saying
15 that it's his fault?

16 A. I'm sorry. What?

17 Q. In that respect, you believe it's
18 his fault?

19 A. I believe there's a lot of fault
20 on Mr. Callender in this case. We'll go back to
21 the Department of Consumer Affairs when he
22 failed to notify the Department of Consumer
23 Affairs, in his complaint, that he was disputing
24 a Judgment, which he should have been well aware
25 of, based upon numerous letters that had been

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1 sent to him. He failed to say anything about
2 the Judgment at all. In fact, alleged that he
3 never had a Discover card; and in this case,
4 also, with the income execution, the whole idea
5 of providing a first-stage execution to the
6 consumer himself without going to the employer
7 is to give the consumer an opportunity to make
8 voluntary payments, or in the case of a dispute,
9 he could dispute it; and, as I said, we would
10 then stop the execution until we had a chance to
11 investigate that dispute.

12 Q. Well, let me make sure I'm clear.
13 Does Forster & Garbus track the number of times
14 it gets complaints by consumers saying, "You're
15 attempting to collect on a vacated Judgment"?

16 A. I don't know -- I don't think
17 specific to that because I don't think that
18 instance arises. Okay. We may keep track on
19 people who say they were never served with the
20 summons.

21 Q. Okay. So, you have -- you have a
22 number of times that consumers -- you keep track
23 of the number of times that consumers contend
24 that they were never served with the Judgment
25 you are collecting on. Right?

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1 A. I'm not sure. I would have to --
2 I know there are some general categories and I
3 don't know if we just keep numbers or we just
4 categorize it, you know, as to the nature of the
5 complaint; but I don't think there's one
6 specifically for vacated -- judgments previously
7 vacated and the reason for that is because it's
8 not a common instance.

9 Q. What did you keep track of the
10 number of times that the consumer says you're
11 collecting on a Judgment where they have never
12 been served?

13 A. I don't know the number.

14 Q. Does Forster & Garbus track that?

15 A. When you say "track it," what do
16 you mean?

17 Q. Does Forster & Garbus track how
18 often consumers claim that you're attempting to
19 collect on a Judgment where the consumer was
20 never served?

21 A. We might have some statistics on
22 that or at least, you know, we can -- there may
23 be some statistics.

24 Q. How often does that happen?

25 A. I don't know.

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1 Q. So, there would be some statistics
2 on that?

3 A. Perhaps.

4 Q. By who?

5 A. Ann Viseccchia.

6 Q. So, you say "categories and
7 statistics." What do you mean by "categories"?
8 Categories of disputes by consumers or what do
9 you mean?

10 A. By consumers, yes.

11 Q. Categories of disputes by
12 consumers of what?

13 A. Well, it could be balance, you
14 know. "I don't owe the balance." "I don't owe
15 the account." Or challenge the balance. That
16 might be a category. "Never served with the
17 summons." We may have them just by people who
18 request documentation. So, these would be broad
19 categories.

20 Q. And these categories are kept
21 because some the creditors that you collect for
22 require tracking of this information?

23 A. Not that I know of, no. I don't
24 believe that's the case.

25 Q. Do you have any idea whatsoever

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1 about how many times consumers contended that
2 Forster & Garbus was collecting on a Judgment
3 where they were never served?

4 MS. LASTORINO: Objection.

5 A. I don't know.

6 Q. Can you obtain that information?

7 A. I might be able to.

8 Q. How long would it take you to find
9 out?

10 A. Well, let's -- I may be able to
11 tell you how many people claimed they were never
12 served. I'm not saying that I can provide you
13 with any statistics on how many people say they
14 were never served and where monies were being
15 collected.

16 MS. LASTORINO: And again, I'm
17 going to object on the scope of that as
18 exceeding the limitations. You're asking
19 for --

20 MR. KESHAVARZ: You never moved to
21 quash on that ground. You only moved to
22 quash on the number --

23 MS. LASTORINO: He made the Order
24 clear as to what the scope of discovery
25 is, as to due diligence on this action.

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1 MR. KESHAVARZ: You're mistaking.

2 MS. LASTORINO: No, I'm not. So,
3 I object to the request.

4 MR. KESHAVARZ: Okay. Objection
5 to the form of the question.

6 Q. So, how long would it take for you
7 to find out this category of the number of times
8 that consumers contend you're collecting on a
9 Judgment where they were never served?

10 MS. LASTORINO: Objection.

11 Q. You can answer.

12 A. I'm sorry. What?

13 Q. You can answer.

14 THE WITNESS: Can I answer?

15 MS. LASTORINO: Actually, I'm
16 seeing this exceeding the scope of the
17 Judge's Order.

18 Q. Okay. You can answer the
19 question.

20 MS. LASTORINO: No, because --

21 MR. KESHAVARZ: You can get the
22 Judge on the phone, if you to ask --

23 MS. LASTORINO: I guess we're
24 going to have to.

25 MR. KESHAVARZ: He said that he

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1 keeps track of this. I'm asking -- so,
2 he's answered that question. The
3 question is how long would it take you to
4 find out that information. He's already
5 answered the question on the subject.
6 So, the question is how long would it
7 take you to find out that information.

8 MS. LASTORINO: Is that what the
9 last question was before this?

10 MR. KESHAVARZ: Regardless of
11 that, let me just ask you the question.

12 Q. How long would it take you to find
13 out how many times that Forster & Garbus has
14 been collecting on a Judgment where the consumer
15 contends that they were never served? How long
16 would it take you to find that out?

17 MS. LASTORINO: You can answer how
18 long. You can answer that question.

19 A. Probably not too long.

20 Q. A few minutes?

21 A. Well, maybe -- maybe more than
22 that but, you know, maybe before the end of the
23 week -- or the end of the day. Is that what
24 you're looking for?

25 Q. I'm just asking. The question is

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1 this: You talk to your IT person. You say,
2 "Hey, how many complaints do we get from
3 consumers contending that we're collecting on a
4 Judgment where they were never served?" How
5 many is that? How long does that take? A few
6 minutes? Half an hour?

7 A. Maybe, perhaps.

8 Q. Would you be willing to obtain
9 that information during lunch?

10 MS. LASTORINO: Objection.

11 Q. You can answer. My question is
12 would you be willing to obtain that information
13 during lunch?

14 A. Well, I would be willing to see if
15 that information is available.

16 Q. Okay.

17 A. And if so, I'll make -- now, I
18 don't know if --

19 MS. LASTORINO: I'm going to
20 object that the information --

21 MR. KESHAVARZ: Wait. He's in the
22 middle of an answer.

23 MS. LASTORINO: I'm sorry. You
24 can finish.

25 A. You're categorizing in such a way

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1 and I'm not agreeing that your characterization
2 is correct. Okay. So that you're saying "on
3 judgments." We might not break it down by
4 judgments. It might just be disputes where
5 people allege lack of service, not breaking it
6 down, judgment versus non-judgment.

7 Q. Is there some sort of a --

8 MS. LASTORINO: I was saying an
9 objection. I let him finish. So, my
10 objection is --

11 MR. KESHAVARZ: Wait. Go ahead.

12 MS. LASTORINO: My objection is,
13 this line of questioning is exceeding the
14 limitation in Judge Hellerstein's
15 September 22, 2016 Order, which
16 specifically said it's due diligence on
17 the Callender matter.

18 MR. KESHAVARZ: May I?

19 MS. LASTORINO: Sure.

20 THE WITNESS: Maybe we should get
21 Hellerstein on the phone.

22 MS. LASTORINO: We'll do that.

23 MR. KESHAVARZ: What's that?

24 MS. LASTORINO: We will get
25 Hellerstein on the phone.

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1 MR. KESHAVARZ: Mark that for a
2 decision by the Court.

3 He already said he could check it
4 during the lunch.

5 THE WITNESS: Well, I could
6 withdraw that.

7 MS. LASTORINO: I objected to it,
8 so.

9 THE WITNESS: Since there's going
10 to be an objection and since you're
11 saying it's going to be on the record,
12 then there's no reason for me to do so
13 until the Judge orders it.

14 MS. LASTORINO: Right.

15 THE WITNESS: So, that's my
16 position at this point.

17 MR. KESHAVARZ: All right. If we
18 have to retake the deposition, we'll have
19 to retake the deposition.

20 THE WITNESS: That's fine. I'm
21 available, and it won't require a
22 deposition because it will require a
23 number.

24 BY MR. KESHAVARZ:

25 Q. Can you identify what Exhibit No.

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1 2 is? Well, let me just ask you. Is that the
2 eCourts' printout for --

3 MS. LASTORINO: Can you identify
4 it for the record, so it's clear?

5 Q. Well, let me ask you, is that a
6 copy -- well, I'm identifying it as a copy of
7 the eCourts printout for Mr. Callender's
8 account, the judgment account that Forster &
9 Garbus was executing on. Is that what it
10 appears to be?

11 MS. LASTORINO: Excuse me. I just
12 want to let the record reflect, since you
13 didn't say the date, this exhibit, it has
14 a date on the bottom of 9/27/2016, 7:34
15 p.m.

16 MR. KESHAVARZ: It says what it
17 says.

18 MS. LASTORINO: I just want the
19 record to reflect that.

20 Q. Okay. The question is, is that
21 the eCourts -- does that appear to be the
22 eCourts' listing for the lawsuit where you were
23 attempting to execute on a vacated Judgment?
24 Right?

25 A. Yes.

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1 Q. So, if Forster & Garbus checked
2 and spent the 30 seconds, 60 seconds, two
3 minutes, to look up eCourts, would Forster &
4 Garbus have executed my client's wages?

5 MS. LASTORINO: Objection.

6 (Whereupon the witness reviews the
7 document.)

8 A. No.

9 Q. Why not?

10 A. Because it indicates the Judgment
11 had been vacated.

12 Q. Any other reason?

13 A. Not that I know of, not that I can
14 see, based on this.

15 MS. LASTORINO: I have a question
16 on the exhibit because you have a Bates
17 stamp at the end that wasn't produced to
18 me and it was actually -- it was printed
19 yesterday. So, I would like to have
20 documents made available to me, if you're
21 showing them to the witness, and you
22 should be current with your production.

23 MR. KESHAVARZ: Okay.

24 MS. LASTORINO: Okay. And if
25 there are other documents, too, after the

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1 Bates Stamp 215, then I would like to
2 have all of those records. I should have
3 had them already, before today.

4 MR. KESHAVARZ: Understood.

5 You can mark this as an exhibit.

6 (Whereupon P-3, Order to Show
7 Cause - Pfau vs. Forster & Garbus, et al,
8 is marked for identification.)

9 Q. Please, review Plaintiff's Exhibit
10 No. 3 and let me know when you're done.

11 (Whereupon the witness reviews the
12 document.)

13 MS. LASTORINO: Excuse me, Ahmad.
14 I don't have any of these documents.

15 MR. KESHAVARZ: Understood.

16 MS. LASTORINO: Well, you've been
17 taking -- I've been very tolerant with
18 you on producing documents to you and you
19 know that. How are we arriving at a
20 deposition and the day of, you're just
21 putting into evidence Bates-stamped
22 documents that I have never received
23 before today?

24 MR. KESHAVARZ: Understood.

25 Q. Review Exhibit 3 and let me know

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1 when you're done.

2 MS. LASTORINO: And I just want
3 the record to reflect that I should have
4 received these documents prior to today
5 and it's not conducting discovery in good
6 faith just to be producing them now.

7 Q. Go ahead. Let me know when you're
8 done, please.

9 THE WITNESS: Let me get a drink
10 of water.

11 MR. KESHAVARZ: Take your time.

12 (Whereupon there is a brief
13 recess.)

14 MS. LASTORINO: I'm going to
15 reserve my right to move to preclude
16 plaintiff's reliance on what he's marked
17 as Deposition Exhibit P-3, insofar as
18 he's just producing this document today
19 and has never served it on defense
20 counsel prior to today, notwithstanding
21 his obligation that he should have served
22 every document in his client's
23 possession, custody or control or
24 anything else that plaintiff intends on
25 using as an exhibit at today's

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1 deposition.

2 BY MR. KESHAVARZ:

3 Q. Please, review Exhibit No. 3 and
4 let me know when you're done, please.

5 A. I'm done.

6 Q. Can you identify what the document
7 is?

8 A. It's called an Order to Show Cause
9 in the Matter of the Petition of the Honorable
10 Ann Pfau against various defendants, Index No.
11 2009-8236, in the Supreme Court of County of
12 Erie.

13 Q. Who is the first defendant?

14 A. Unfortunately, Forster & Garbus.

15 Q. So, the filed lawsuit contended
16 that Forster & Garbus and others were using
17 process servers that were systematically filing
18 false Affidavits of Service. Isn't that
19 correct?

20 MS. LASTORINO: Objection to form.

21 A. Yes.

22 MS. LASTORINO: Just let me
23 object, first.

24 THE WITNESS: I'm sorry.

25 MS. LASTORINO: Go ahead.

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1 A. Yes.

2 Q. So, is it common for consumers to
3 file Orders to Show Cause to vacate judgments
4 that they collect -- they contend -- strike
5 that.

6 What steps did Forster & Garbus
7 take, if any, in response to the Pfau lawsuit?

8 A. We responded to the Order to Show
9 Cause.

10 Q. And what policies and procedures
11 did Forster & Garbus change in response to the
12 Pfau lawsuit?

13 MS. LASTORINO: Before we proceed,
14 I'm going to object on the grounds
15 that -- along with my other objections --
16 that this is not relevant. It's not
17 likely to lead to relevant evidence.
18 It's just solely designed to harass.

19 Also, can I please have the
20 production of other documents right now,
21 before we proceed because I see that my
22 Bates stamp ends at 214 and I see that
23 this picks up at Bates Stamp 235.

24 THE WITNESS: What does yours end
25 at?

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1 MS. LASTORINO: 214.

2 MR. KESHAVARZ: I provide to
3 opposing counsel, documents Bates stamped
4 Callender 215 to Callender 303. As
5 opposing counsel has noted, looking at
6 page 215, was eCourts web printout that
7 was created last night.

8 MS. LASTORINO: So, 214 to -- did
9 you say, to 303?

10 MR. KESHAVARZ: 215. You have
11 214.

12 MS. LASTORINO: 215 to 303, you
13 said?

14 MR. KESHAVARZ: That is correct.

15 MS. LASTORINO: Okay. So, we're
16 going to have to take a break now. I'm
17 going to look at the documents because
18 these should have been produced prior to
19 today and I have a right to see the rest
20 of the document production.

21 MR. KESHAVARZ: All right. Well,
22 let me just ask him a question.

23 MS. LASTORINO: I want to look at
24 the documents.

25 MR. KESHAVARZ: Look at the

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1 documents. Take your time. It's nothing
2 earth shattering.

3 MS. LASTORINO: What's earth
4 shattering is you're not conducting
5 discovery in good faith. You like to be
6 right on top of everyone else, if they're
7 a second late with discovery, but yet,
8 you come to a deposition with numerous
9 documents. I mean we're going from 215
10 to 303 without even serving them on me
11 before the deposition even started. You
12 just take documents out, you mark them as
13 exhibit, without ever seeing them before,
14 on my part. That's really, really not
15 conducting discovery in good faith and I
16 reserve all my rights to make a motion to
17 the Court for whatever the Court deems
18 appropriate.

19 Q. Will you turn your attention to
20 Exhibit 3, I believe Bates stamp --

21 MS. LASTORINO: Just a minute.

22 MR. KESHAVARZ: You can actually
23 look at the exhibit, if you like. It's
24 the same document.

25 MS. LASTORINO: And this is

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1 subject to my other objections, too. In
2 addition to the objection that this
3 really, again, exceeds the scope of the
4 Judge's Order. How does this have
5 anything to do with due diligence on
6 Callender's matter?

7 MR. KESHAVARZ: Are you done?

8 MS. LASTORINO: Well, I'm asking.
9 I don't believe this is proper
10 questioning.

11 MR. KESHAVARZ: I understand.

12 Q. Will you go on Exhibit 3 to page
13 254 and let me know --

14 MS. LASTORINO: Subject to those
15 objections, without waiving anything, you
16 can take a look at the exhibit.

17 Q. Exhibit 3, page 254.

18 MS. LASTORINO: And please, your
19 hand gestures. Keep them to yourself.
20 Don't give me the rush-along hand
21 gesture. Okay? And let the record
22 reflect that that was happening.

23 MR. KESHAVARZ: I'm not sure what
24 that means, but okay.

Q. When you're done --

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1 A. I'm done.

2 Q. Have you had a chance to review
3 Exhibit 3, Callender 254?

4 A. I'm sorry. What?

5 Q. Have you had a chance to review
6 that document?

7 A. Yes. I'm just looking at it, yes.

8 Q. All right. Let me just ask you,
9 regardless of what the document says, the Pfau
10 lawsuit contends that there were instances of --
11 you know, hundreds of instances where process
12 servers claimed to be at the same place at the
13 same time. Right?

14 MS. LASTORINO: Objection.

15 A. I wouldn't say hundreds of times
16 because the exhibit you're presenting does not
17 show hundreds of times.

18 (Whereupon there is a brief
19 interruption and the reporter asks the
20 witness to repeat his answer.)

21 MS. LASTORINO: Would like the
22 question read back?

23 THE WITNESS: I'll step back from
24 that.

25 A. Yes, I looked at the third column.

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1 I didn't look at the second column, yes.

2 Q. But the general question is -- I
3 think you answered it already, but since you had
4 a pause in between --

5 A. Yes, I answered it.

6 Q. Let me make sure the question is
7 clear. So, the Pfau lawsuit contended that
8 Forster & Garbus and other debt collectors,
9 other debt-collecting law firms were using
10 process servers that systematically executed
11 false Affidavits of Service. That is, the
12 allegation was that the process server claimed
13 to be at one location serving when that wasn't
14 true. Is that, in a nutshell, what the Pfau
15 lawsuit was about?

16 MS. LASTORINO: Objection to form.

17 A. Yes.

18 Q. In response to the Pfau lawsuit,
19 what changes, if any, did Forster & Garbus make
20 to its policies and procedures?

21 MS. LASTORINO: Objection.

22 A. We engaged process servers. We
23 insisted that process servers use GPS and photo.
24 When they went out to serve, they were required
25 to have smart phones and take pictures, you

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1 know. We also review -- we have review of the
2 information in terms of -- well, first of all,
3 even before the Pfau lawsuit and afterwards, in
4 terms of times of service, you know, so that the
5 service had to be spread out. Not just at the
6 same time every day. It would have to be
7 served, you know, one time -- if there were more
8 than one attempt, attempts in the morning,
9 attempts in the afternoon, attempts in the
10 evening. The process servers are required to
11 take pictures of and have GPS coordinates to
12 review the affidavits of service. You have to
13 understand something about the Pfau lawsuit.
14 The Attorney General spent an awful lot of money
15 and time and was able to do it because they had
16 the ability to go into court and coordinate
17 service information from various attorney law
18 firms, you know. So that it became evident that
19 a person who was in two locations at the same
20 time wasn't necessarily on a Forster & Garbus or
21 a Cohen & Slamowitz case. It could have been a
22 Forster & Garbus and a Wolpoff & Abramson case.
23 So that the -- you know. So, it was a
24 tremendous amount of investigation to come up
25 with this. The result was a consent order,

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1 which speaks for itself, and there was
2 implementation of certain changes, such as I
3 said, with the process servers taking pictures,
4 taking GPS coordinates, that kind of
5 information; and limiting, you know, again
6 limiting the times they could serve and telling
7 them they could only serve at certain times of
8 the day.

9 Q. Okay. Do you believe the
10 allegations in the Pfau lawsuit as to the
11 process servers reporting -- well, strike that.

12 Let me just ask you this: It's
13 common for -- strike that.

14 What is "sewer service"?

15 MS. LASTORINO: Objection to form.

16 A. Sewer service is commonly meant
17 that service which was not properly effectuated
18 but a false affidavit, in effect, was made by
19 the process server. So, they call it sewer
20 service because it would be as if you threw the
21 summons down the sewer.

22 Q. So, in the Pfau lawsuits, the
23 documented hundreds of times where the process
24 servers had filed sewer service affidavits.

25 Correct?

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1 A. Yes.

2 Q. And are you aware of the Sykes
3 Class Action against Mel Harris?

4 A. Yes.

5 Q. And it's your understanding that
6 as part of the settlement that Mel Harris now
7 are vacating a hundred and ninety thousand
8 judgments based on systematic sewer service?

9 A. Whatever the number is.

10 Q. Is that roughly correct?

11 A. I understand there were judgments
12 that had to be vacated. I have no idea about
13 the numbers.

14 Q. Would you say it was a mass number
15 of vacation of judgments?

16 A. I won't comment on that because I
17 haven't read the Sykes case in years.

18 Q. So, were you aware of the class
19 action settlement?

20 A. Yes, Leucadia, yes.

21 Q. And part of the settlement is
22 they're going to vacate a bunch of judgments?

23 A. Right.

24 Q. The allegation was that Samserv
25 was filing maybe a hundred thousand false

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1 affidavits of service so Mel Harris could get a
2 Default Judgment based on that false affidavit
3 of service. Is that basically your
4 understanding of what Sykes is about?

5 MS. LASTORINO: Objection to form.

6 A. Yes.

7 Q. Now, given the widespread
8 allegations of sewer service, orders to show
9 cause to vacate judgments are fairly common.

10 Correct?

11 A. And less common today after the
12 Pfau decision.

13 Q. But before the Pfau decision --
14 when was that?

15 A. 2010, I think was the -- it was a
16 2009 index number. I think it was settled in
17 2010, if I remember.

18 Q. So, up to the Pfau decision, it
19 was common for consumers to file orders to show
20 cause to vacate judgments because they contend
21 they were never served. Right?

22 MS. LASTORINO: Objection to the
23 form.

24 A. Say that again? Repeat the
25 question. Did you say "after the Pfau

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1 decision"?

2 Q. Well, let me ask, up to the Pfau
3 decision, was it fairly common for consumers to
4 file orders to show cause to contend that they
5 were never served with the summons and
6 complaint?

7 MS. LASTORINO: Objection to form.

8 A. I don't know what you mean by
9 "common." You know, it all depends on number of
10 suits versus number of orders to show cause. It
11 was always orders to show cause filed pre-Pfau,
12 post-Pfau, okay, on that issue. That's not an
13 uncommon issue to be found before the Court.
14 Were there more cases percentage-wise before
15 Pfau than after Pfau, I would say probably, you
16 know, and that would be my best guesstimate.
17 Okay. Because now the process servers
18 themselves are held, you know, after Pfau with
19 the picture-taking. We know they have to go out
20 there because we don't -- you know, we insist on
21 seeing the pictures. We insist on getting those
22 pictures and the GPS coordinates. So that --
23 and then subsequently, the Department of
24 Consumer Affairs licensed process servers in New
25 York and imposed very strict rules. So, the

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1 result is that I think there are probably less
2 orders to show cause on the issue of service of
3 summons than there was pre-Pfau.

4 Q. For summonses that were served
5 after Pfau. Right? I mean if the summons was
6 served ten years ago, there would still be --

7 A. Yes. I guess you could classify
8 it.

9 Q. So, the question is clear, when
10 your saying it's less common, you mean less
11 common for judgments that are entered after Pfau
12 than before Pfau. Right?

13 A. Yes. Less orders to show cause,
14 yes, after Pfau, yes.

15 Q. But for judgments that were
16 entered prior to 2010, for those judgments, it
17 was fairly common for consumers to file orders
18 to show cause, contending that the process
19 server never served them. Right?

20 MS. LASTORINO: Objection to form.

21 A. And again, I don't know what
22 the word "common" means. You know, if there's a
23 hundred thousand lawsuits and a thousand orders
24 to show cause, is that common? It's, obviously,
25 based on a percentage. So, what you say is

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1 common, is that 50 percent or is it 1 percent?

2 Q. And what do you think? For
3 judgments pre-Pfau?

4 A. It certainly is a small
5 percentage-wise of the number of judgments that
6 are entered that are challenged. Number-wise,
7 you know, if you sue a hundred thousand people,
8 you're going to get a certain level. If you sue
9 two hundred thousand people, you might get twice
10 that level, but as a percentage, you know, it
11 still might be a small percentage.

12 Q. Does Forster & Garbus treat
13 judgments that were entered prior to Pfau
14 differently than judgments that were entered
15 after Pfau?

16 MS. LASTORINO: Objection to form.

17 Q. In terms of executing on those
18 judgments.

19 A. No.

20 Q. Okay. Why not?

21 A. Because a judgment is a judgment
22 is a judgment. A judgment is good for 20 years.
23 If I have no reason to believe that that
24 Judgment -- you know, if I believe that there's
25 a Judgment that's enforceable, then it's

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1 enforceable. Whether it was entered ten years
2 ago, eight years ago, three years ago, you know,
3 two years ago, there can be issues as to the
4 particular Judgment. That would be true
5 pre-Pfau, post-Pfau. A person alleges he wasn't
6 served and says he wasn't living at that address
7 and produces evidence that he wasn't living at
8 that address, it doesn't matter if it was
9 pre-Pfau or post-Pfau. We would treat it the
10 same way. We would ask him to show proof that
11 he didn't live at that address.

12 Q. And then what?

13 A. Then we might vacate -- probably
14 vacate the Judgment.

15 Q. Do you know how often -- let me
16 ask you this. For judgments that were
17 searched -- strike that.

18 For judgments that Forster &
19 Garbus collects where Forster & Garbus is not
20 the attorney that got the Judgment, but 3500 new
21 accounts a year, does Forster & Garbus keep
22 track of how many orders to show cause are filed
23 for those 3500 or so judgment accounts Forster &
24 Garbus gets each year?

25 A. No.

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1 Q. But for the judgments -- including
2 the judgments -- those 3500 judgment accounts
3 you get every year, were you saying that Forster
4 & Garbus -- correct me if I'm wrong -- that
5 Forster & Garbus keeps track of complaints for
6 consumers that they were never served with those
7 summons and complaints for those judgments?

8 MS. LASTORINO: Objection to form.

9 Q. Are you saying you did or you
10 didn't keep track of that?

11 A. I said that if a person disputes
12 that may be a category that our compliance
13 department might be able to produce a number of
14 complaints that fall into a category of
15 disputing service.

16 Q. But why doesn't Forster &
17 Garbus -- strike that.

18 By disputing service, you mean
19 phone calls or letters by consumers. Correct?

20 A. Disputing --

21 Q. Well, by disputing service, this
22 characterization that you --

23 A. It's that a person makes a
24 complaint saying I was never served with the
25 summons.

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1 Q. Okay. But of those complaints --
2 strike that.

3 Are you talking about complaints
4 that are orders to show cause or not orders to
5 show cause?

6 A. No. Things that would go through
7 compliance, not orders to show cause.

8 Q. Okay. If Forster & Garbus keeps
9 track of complaints where consumers say they
10 were never served the collection lawsuit that
11 you're executing on, why do you only keep track
12 of it if there's no Order to Show Cause that's
13 found?

14 MS. LASTORINO: Objection to form.

15 A. The answer is one goes to the
16 compliance department and one goes to the legal
17 department. It's a different category. Those
18 are legal cases and we know the number of orders
19 to show cause that were filed.

20 Q. How many?

21 A. I don't know.

22 Q. So, I guess -- are you saying you
23 do know the number of Orders to Show Cause that
24 are filed to vacate judgments that Forster &
25 Garbus have collected. Correct?

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1 A. Yes, we would know the number of
2 Orders to Show Cause served upon the firm, yes.
3 We keep track of how many Orders to Show Cause
4 we get monthly.

5 Q. And how many are they?

6 A. I have no idea.

7 Q. Okay. But those are the only
8 instances where Forster & Garbus -- strike that.

9 That raises another question I
10 wanted to ask. The original law firm here was
11 either Wolpoff & Abramson or -- I think it
12 was Wolpoff or Mann Bracken, whichever one it
13 was. Mann Bracken, Wolpoff & Abramson, they
14 suddenly imploded and abandoned all these
15 collection lawsuits that were being filed.

16 Right?

17 A. I believe so, yes.

18 Q. They have abandoned tens of
19 thousands of cases -- collection lawsuits that
20 had been filed, of which, they have abandoned
21 tens of thousands of cases.

22 MS. LASTORINO: Objection to form.

23 A. When you say, "abandoned," I
24 understand they went out of business or
25 something like that.

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1 Q. But they didn't -- so, the cases
2 where they were the attorney of record, those
3 big cases just languished after Wolpoff &
4 Abramson and the other firm shut down. Right?

5 A. I have no idea what happened with
6 the cases.

7 Q. Wolpoff & Abramson and what was
8 the other one?

9 A. Mann Bracken.

10 Q. Mann Bracken, yes. So, does
11 Forster & Garbus track to see if the law firm
12 that got the Judgment -- it was either Wolpoff &
13 Abramson or Mann Bracken, for the accounts it
14 gets for judgment collection, where Forster &
15 Garbus didn't obtain the Judgment, does it keep
16 track of who the law firm was that got the
17 Judgment?

18 A. Not that I know of.

19 Q. Not just for Wolpoff & Abramson
20 but Mann Bracken. Forster & Garbus doesn't keep
21 track of any of the law firms that obtained the
22 Judgment for which Forster & Garbus collected?

23 MS. LASTORINO: Objection to form.

24 A. Not a separate characterization,
25 no.

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1 Q. So, if there -- strike that.

2 Forster & Garbus didn't file
3 Notice of Substitution in Mr. Callender's
4 collection lawsuit. Correct?

5 A. Correct.

6 Q. And is it your firm's policy to
7 not file attorney substitutions in the Court
8 file if it is a judgment account that's placed
9 with Forster & Garbus?

10 MS. LASTORINO: Objection to form.

11 A. We've changed our procedures over
12 the years and we always wanted to file
13 substitutions of attorneys, if we could and we
14 do so now; and if we need to file Notice of
15 Appearance as counsel for plaintiff or
16 Substitution of Attorney, we do so, you know,
17 but not as much as in the past.

18 Q. By doing so, you mean doing so in
19 judgment account cases where -- let me just use
20 shorthand. When I say "judgment account cases,"
21 will you understand that to mean where a
22 judgment is obtained by a firm other than
23 Forster & Garbus?

24 A. Yes, if you define it as such.

25 Q. And that's generally how you've

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1 understood I've been using the term "judgment
2 accounts"?

3 A. Yes, um-hum.

4 Q. So, are you saying for judgment
5 accounts, it's now the policy of Forster &
6 Garbus to file a Notice of Appearance or
7 Substitution of Counsel for all of the judgment
8 accounts it's collecting?

9 A. Yes.

10 Q. Is it only the new judgment
11 accounts it's collecting or the prior ones or
12 the ones that was -- strike that.

13 Is it only the judgment accounts
14 that were placed after a certain date or is it
15 all judgment accounts that Forster & Garbus is
16 collecting on?

17 A. Placed after a certain date.

18 Q. When was that date?

19 A. Approximately 2014 or 2015,
20 probably.

21 Q. Around that November 2014 date,
22 something like that?

23 A. Yes, somewhat, you know, and
24 again, we had -- you know, not that we weren't
25 doing that beforehand but more so afterwards.

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1 Q. It was the policy and procedure
2 after November of 2014?

3 A. Yes.

4 Q. To provide -- to file a Notice of
5 Appearance or a Substitution for judgment
6 accounts. Correct?

7 A. Um-hum.

8 Q. Say, "yes" or "no."

9 A. Yes.

10 Q. But it wasn't policy or procedure
11 before that point?

12 A. Right.

13 Q. All right. Do you know or do you
14 not know what percentage of judgment accounts
15 placed prior to November 2014, that Forster &
16 Garbus made a Notice of Appearance or
17 Substitution on?

18 A. No, I dot no.

19 Q. When you file Notice of Appearance
20 or Substitution, do you serve the consumer with
21 that Notice or that Substitution?

22 A. You know, I don't know the answer
23 to that.

24 Q. Because if you filed the Notice or
25 the Substitution in the court file, Mr.

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1 Callender could have served you a copy of the
2 Order to Show Cause. Right?

3 MS. LASTORINO: Objection to form.

4 A. I guess he could have, as he could
5 have since he was well aware of our firm's
6 involvement in the case and he knew we were
7 seeking to collect the Judgment.

8 Q. Well, it says in the Complaint
9 that he was confused. He didn't know which
10 account you were guys were collecting on because
11 he just vacated the Judgment. Can you
12 understand why a consumer would be confused by
13 that or no?

14 A. I don't have any idea.

15 Q. All right. Why is it Forster &
16 Garbus's policy now to file Notice of Appearance
17 or Substitution -- Substitution of Counsel?

18 A. I think we, as better practice, we
19 always seek to go and improve our -- you know,
20 our practices.

21 Q. In what way do you believe that
22 improves your practice?

23 A. Well, this case is something that
24 would say, "maybe we should do that more."
25 "Maybe we should make sure we do that."

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1 Q. So, you're saying one of the
2 triggers for the change in policy was Mr.
3 Callender's lawsuit?

4 A. Well, no, I'm not saying that but
5 I'm saying a case like this would, you know.

6 Q. Would what?

7 A. Would, you know, show that maybe
8 we learn from, you know, as we go along. So, it
9 just brings to our attention.

10 Q. When you start doing this,
11 consumers can start serving you with the Order
12 to Show Cause to Vacate. Right?

13 A. Right, but it hasn't been a
14 problem. With the exception of a few cases, I
15 don't know where that's been an issue.

16 Q. Because you don't keep track of
17 it?

18 A. But I can observe. I know what --
19 you know, without keeping actual records of it,
20 I have a general understanding of how often
21 these things arise. We don't have to have, you
22 know, strict numbers to know that there are
23 problems.

24 Q. So, to your recollection, the only
25 times Forster & Garbus has been sued for

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1 collecting on a vacated Judgment was from Mr.

2 Callender and Mr. Francis. Right?

3 A. I guess, you know, I guess.

4 Q. To your recollection, there aren't
5 any other instances where that's happened?

6 A. To my recollection, no.

7 MR. KESHAVARZ: Mark that, please.

8 (Whereupon the document is marked
9 P-4 for identification.)

10 Q. Sir, if you can take a look at
11 Exhibit No. 4. Let me know when you're done.

12 MS. LASTORINO: I'm going to just
13 reiterate the same objections I had when
14 plaintiff's counsel introduced the other
15 documents into evidence. I won't go
16 through the whole litany but I'm
17 preserving the same objections and
18 motions.

19 (Whereupon the witness reviews the
20 document.)

21 A. Okay.

22 Q. Is that the Brown lawsuit against
23 Forster & Garbus for executing on a vacated
24 Judgment?

25 A. Yes.

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1 Q. That's Bates stamped Callender 263
2 to Callender 303. Correct?

3 A. You're asking me?

4 Q. Yes.

5 A. 263 to 303, yes.

6 Q. Why was Forster & Garbus executing
7 on the vacated Judgment?

8 MS. LASTORINO: Objection to form.

9 A. I won't answer that.

10 MS. LASTORINO: I'm objecting on,
11 again, this is just designed to harass.
12 There is nothing relevant as to this.

13 He's answering your question as to what
14 was due in the Callender matter, as per
15 the Court's Order.

16 A. And that case was probably settled
17 and it was settled and --

18 MS. LASTORINO: Not -- I'm sorry.
19 Go ahead.

20 A. And it's probably a
21 confidentiality agreement. I'm not going to
22 answer this. The case speaks for itself. It's
23 a public record.

24 MS. LASTORINO: Excuse me. Also
25 objecting on your -- I guess this was

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1 your intention of your surprise tactic, I
2 guess, to not give someone notice before.
3 So, that's really, really not in good
4 faith and, in my opinion, sanctionable.
5 We'll leave it up to the Court.

6 Q. So, you say the reason why -- one
7 of the reasons why you executed on the vacated
8 Judgment as to Mr. Callender is that you didn't
9 know, the client never told you, and Mr.
10 Callender never told you that the Judgment was
11 vacated. Right?

12 MS. LASTORINO: Objection to form.
13 Go ahead. You can answer.

14 A. Primarily, yes.

15 Q. And what is the reason that
16 Forster & Garbus executed on Miss Brown's --
17 executed against Miss Brown for a Judgment that
18 had been vacated, as per Plaintiff's Exhibit 4?

19 MS. LASTORINO: Objection. We
20 could mark it for a ruling. This is
21 beyond the scope.

22 A. Since the complaint speaks for
23 itself and the case was settled and since I
24 can't remember the specifics of that case, I
25 can't comment.

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1 Q. Well, you can --

2 A. I can't comment on it because I
3 don't remember the specifics of the case and I'm
4 not going to now, being surprised by this, have
5 to, all of a sudden, do any investigation.

6 MS. LASTORINO: Right. If you
7 want to call the Court, let's do it right
8 now.

9 MR. KESHAVARZ: Call the Court for
10 what?

11 MS. LASTORINO: We are objecting
12 to this line of questioning on a document
13 that has nothing to do with Callender's
14 case, on something you just surprised us
15 with. Let's get the Judge's opinion on
16 it.

17 MR. KESHAVARZ: He testified that
18 it only happened to Callender and
19 Francis. Now, we know that it happened
20 again. So, I'm trying to figure out how
21 many times Forster & Garbus has been sued
22 for executing a vacated Judgment.

23 MS. LASTORINO: I think the
24 document speaks for itself. He told you
25 he doesn't have a recollection of it, so.

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1 Q. Please, review Exhibit No. 4 and
2 let me know when you're done.

3 MS. LASTORINO: Which one?

4 MR. KESHAVARZ: Exhibit No. 4,
5 please.

6 A. That's the Brown thing.

7 MS. LASTORINO: Oh, no. I'm
8 objecting. Let's mark it for a ruling.

9 Q. Please, reviews Exhibit No. 4 and
10 let me know when you're done.

11 A. On advice of my attorney, I'm not
12 going to review it.

13 MR. KESHAVARZ: Is there any basis
14 for the objection, other than what you've
15 stated?

16 MS. LASTORINO: I stated several
17 objections.

18 MR. KESHAVARZ: All right. Let's
19 make sure the record is clear. What's
20 the basis for the objection for me not
21 being able to ask the witness to review
22 Exhibit 4?

23 MS. LASTORINO: Okay. You know
24 what? Review the exhibit.

25 (Whereupon the witness reviews the

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1 exhibit.)

2 A. All right.

3 Q. What was the reason for executing
4 on Miss Brown's -- executing on a vacated
5 Judgment as to Miss Brown?

6 MS. LASTORINO: Objection.

7 A. I won't answer that.

8 MR. KESHAVARZ: Basis?

9 MS. LASTORINO: He testified
10 before that he wasn't aware of it. So,
11 you're asking him to speculate.

12 MR. KESHAVARZ: No, no.

13 MS. LASTORINO: The allegations
14 are allegations, Ahmad. You're asking
15 him to give credence to the allegations
16 of a document that he says he's not aware
17 of.

18 Q. Did Forster & Garbus execute on a
19 vacated Judgment as to Miss Brown, as per
20 Exhibit 4?

21 MS. LASTORINO: Objection. Asked
22 and answered.

23 MR. KESHAVARZ: Not answered.

24 MS. LASTORINO: He said he doesn't
25 know.

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1 MR. KESHAVARZ: You know, if you
2 have an objection to form, that's fine.

3 Go ahead. You can answer.

4 MS. LASTORINO: The objection to
5 form is that it was asked and answered.

6 MR. KESHAVARZ: Objection to form
7 preserves all of those organizations.

8 Q. So the question is well, pointing
9 your attention to Exhibit 4, the Brown complaint
10 against Forster & Garbus. Why did Forster &
11 Garbus execute on a vacated Judgment as to Miss
12 Brown?

13 A. I can't answer the question why.
14 You can ask me whether or not we did. The
15 answer is yes. That's obvious from the
16 Complaint and the case, but I can't answer why.
17 I don't know the facts of case now. It goes
18 back awhile.

19 Q. It was it filed in 2015?

20 A. Yeah.

21 MS. LASTORINO: Again, these are
22 someone's allegations. So, I object to
23 you asking him the credence of somebody's
24 allegations in a complaint.

25 Q. The suit was filed in August of

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1 2015?

2 A. This case has been settled. So,
3 it was settled and it speaks for itself.

4 Q. It was settled in the last few
5 months. Right?

6 A. It was settled, though. It was
7 settled and it speaks for itself. So, I don't
8 have to go in -- I don't have to relitigate a
9 case that's already been litigated, and that was
10 involved in a lawsuit that was settled to the
11 satisfaction of Miss Brown and her attorney.

12 MS. LASTORINO: And again, I
13 object because this lawsuit has nothing
14 to do with the due diligence that was
15 conducted as to Callender's case, which
16 the Judge made clear is the scope of
17 discovery here.

18 Q. Wait a minute. Let me make sure
19 Forster & Garbus's position is clear here. Are
20 you saying it doesn't matter how many times
21 Forster & Garbus was sued on vacating a
22 Judgment, that has no relevance at all as to any
23 issue for Mr. Callender? Is that Forster &
24 Garbus's position?

25 MS. LASTORINO: Objection to form.

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1 A. I'm saying on this case, that
2 there's no reason for me to comment onto the
3 why's and wherefore's on a case that's been sued
4 and settled. That's my answer.

5 Q. All right.

6 A. That's my answer.

7 Q. Does it matter to Forster & Garbus
8 how many times it's been sued on collecting on a
9 vacated Judgment in terms of its defenses to Mr.
10 Callender's case?

11 MS. LASTORINO: Objection to form.

12 Q. You can answer the question.

13 MS. LASTORINO: I'm sorry. Did
14 the beginning of that question -- can you
15 read it back because I thought it said
16 "does it matter," but I'm not a hundred
17 percent sure.

18 (Whereupon the last question is
19 read back by the reporter.)

20 MS. LASTORINO: I'm objecting to
21 that question. That is so argumentative.
22 Why don't you rephrase your question.

23 Q. You can answer the question.

24 MS. LASTORINO: It's
25 argumentative.

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1 MR. KESHAVARZ: That's fine.

2 You've preserved that objection by
3 objecting to the form of the question.

4 You may answer the question.

5 A. I really have trouble in answering
6 the question. It's so broad. When you say,
7 "Does it matter?" What does "matter" mean?
8 Well, we're always concerned if there are
9 problems with an account. So, in that sense, it
10 matters. Does it matter as to the individual
11 case that we're talking about here where Judge
12 Hellerstein has ruled that it's specific to that
13 case? No, I guess it doesn't matter because
14 Callender's case stands alone, as to the issue
15 of whether or not we proceeded on a vacated
16 Judgment on Callender. So, you know, that's how
17 I'll answer that question.

18 Q. Putting aside whatever Judge
19 Hellerstein may have or may not have ruled, is
20 it Forster & Garbus's position that it is not
21 relevant to Mr. Callender's claims whether
22 Forster & Garbus have been sued once or a
23 hundred times for collecting on a vacated
24 Judgment? Is that Forster & Garbus's position,
25 prior to executing on Mr. Callender's wages? Is

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1 that Forster & Garbus's position?

2 MS. LASTORINO: Objection to form.

3 A. And again, I have a question with
4 the relevancy, you know, in terms of, you know,
5 numbers. Does -- you throw out a figure of
6 three and then you throw out a figure of a
7 hundred. Well, a hundred is a lot different
8 than three. A thousand is a lot different than
9 three. Four thousand is a lot different than
10 three. So, in terms of Mr. Callender's case,
11 you know, just as in other situations, there
12 could be a problem here and there. If it's not
13 an endemic problem, then it may not be relevant
14 to Mr. Callender's case, which is a
15 fact-specific case. That's what you sued us on.
16 That is the case at hand. That is the case
17 that's relevant here. That's Forster & Garbus's
18 position. We'll address the issues in
19 Callender.

20 Q. Just so I'm clear, you're saying
21 that it's Forster & Garbus's position it's not
22 relevant how many times -- it's not relevant to
23 Mr. Callender's case or your defenses to Mr.
24 Callender's case, how many times Forster &
25 Garbus has been sued previously for executing on

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1 a vacated Judgment?

2 MS. LASTORINO: Objection. You're
3 putting words in his mouth.

4 A. Right. I'm not going to answer
5 that. Let the Court decide what's relevant.

6 Q. Do you understand the question?

7 A. No, not really.

8 Q. All right. Well, let me rephrase
9 the question. I'll be glad to.

10 Is it Forster & Garbus's position
11 that it's not relevant to Mr. Callender's claims
12 or Forster & Garbus defenses as to how many
13 times Forster & Garbus has previously been sued
14 for executing on a vacated Judgment?

15 A. I'm not in a position to comment
16 on whether it's relevant or not, on behalf of
17 Forster & Garbus.

18 Q. Forster & Garbus doesn't have a
19 position either way?

20 MS. LASTORINO: What was the
21 question?

22 Q. Forster & Garbus doesn't have a
23 position either way?

24 A. I think that's what this is -- you
25 brought this case. I don't have a decision on

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1 it, as to whether or not. Okay.

2 MR. KESHAVARZ: You can mark that,
3 please.

4 (Whereupon the document is marked
5 P-5 for identification.)

6 Q. Please, take a look at Exhibit No.
7 5 and let me know when you are done, sir.

8 (Whereupon the witness reviews the
9 document.)

10 (Whereupon there is an
11 off-the-record discussion.)

12 MR. KESHAVARZ: You know what? We
13 can just take a break for lunch now and
14 come back in about an hour. Off the
15 record.

16 (Whereupon the lunch recess is
17 taken.)

18 BY MR. KESHAVARZ:

19 Q. Good afternoon. So, Mr.
20 Callender's account, judgment account, was with
21 Forster & Garbus for about six years. Right?

22 A. Yes, approximately.

23 Q. Is that about average for judgment
24 accounts to be with the firm?

25 A. I wouldn't say there's an average

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1 because it depends on the client. Some clients
2 recall judgment. So, it depends on the
3 activity. So, it varies. There's no, quote,
4 average. You know, some clients leave us with
5 the accounts, pretty much, forever, I guess.
6 Other clients recall the accounts relatively
7 quickly, if you don't find an asset and don't
8 collect on it.

9 Q. What is relatively quickly?

10 A. A year.

11 Q. So, for Mr. Callender's account,
12 there were a few attempts to collect on the
13 Judgment. There was information subpoenaed to
14 Banco Popular, in addition to the wage
15 garnishment. Is there like a typical range of
16 garnishments, income executions that are done?

17 A. Just if we find -- you know, if we
18 have a reason to believe he has an account or
19 job located, we don't do things like sell real
20 property out from under the person. We don't
21 send a marshal down to their house to seize
22 their personal property. We don't seize
23 automobiles. So, it's relatively limited in
24 terms of the enforcement devices that we use.
25 Basically, income executions and restraining

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1 notices with property executions. If there's
2 joint accounts, you might have to do a turnover
3 proceeding and liens on real property. If we
4 believe the person owns real property, we file a
5 lien.

6 Q. The restraint on the bank is a
7 freeze on the bank account?

8 A. A freeze on the bank account, yes.

9 Q. So, for him, it happened about two
10 or three maybe times. Is that about average,
11 normal? Three, four, five?

12 A. I'm sorry. I didn't catch the
13 first part.

14 Q. About how many times is it
15 normal -- you have accounts that are usually
16 there between one year and forever. To use your
17 words, "forever." About how many income
18 executions or bank restraints, typically, on
19 average would they issue?

20 MS. LASTORINO: Objection to form.

21 A. There's no -- every account is
22 different, obviously. When you say an
23 average -- I mean, usually, you're lucky on an
24 account if you find one bank account, you know,
25 that has money in it because now, with the

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1 Exempt Income Protection Act, many accounts, the
2 banks don't hold the money because the people
3 have less than the exempt amount. So, there's a
4 lot less bank account restraints these days than
5 there were in the past. So, and most people
6 don't maintain more than one bank account, you
7 know. I would say the average consumer does not
8 maintain multiple accounts. Once and awhile,
9 you'll find -- you might find two bank accounts
10 restrained, you know, find assets that you
11 restrain in maybe two bank accounts.

12 Same thing. Obviously, employment
13 is one at a time. So, if you find a job, you
14 issue the income execution but it's not like
15 you'll see six income executions on file. You
16 might see two, you know, if he left a job and
17 then he found a job subsequently. So, you might
18 see two income executions, probably at most, on
19 any file, over however many years you're talking
20 about. Same thing with the banks.

21 Q. Well, the bank account, I would
22 think it would be harder to find the right bank.
23 I would imagine you would have to do several
24 bank accounts until you found one.

25 MS. LASTORINO: Objection to form.

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1 A. Obviously, it's harder to bind a
2 bank -- well, it's hard to find either,
3 truthfully, you know; and again, with the Exempt
4 Income Protection Act, whereas in the past, you
5 would be able to restrain more money. You can't
6 do that anymore.

7 Q. I'm just trying to wonder the
8 number of times you tried to restrain because --
9 I'm just wondering about how many times you have
10 to go before you make a hit, to use the --

11 MS. LASTORINO: Objection to form.

12 Are you talking about on Callender's
13 matter? What are you talking about?

14 Q. Do you understand the question?

15 A. Yes. I mean there's only a
16 limited number of banks and you focus in on the
17 banks that are most likely to have money in
18 them. So, proximity to his location, work
19 because most people bank at work. So, you hit
20 those banks; and if you don't hit them -- we
21 don't do more than one restraint per bank.

22 Q. All right.

23 A. So, basically, if I serve a
24 restraining notice on say Citibank or Banco
25 Popular, in this case, then I would never serve

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1 one again on Banco Popular.

2 Q. Because, you know, there's no
3 month there?

4 A. And because under the -- we
5 interpret the restraining notice section to
6 limit you to one time.

7 Q. So, one of the documents -- and we
8 can go through them if you want -- it said
9 something about bank -- do you use a service?
10 It was like a bank -- what do you call it? Is
11 there a service that you use that -- bank
12 finder?

13 A. Bank finders.

14 Q. What is that?

15 A. That's a program that is in-house.
16 It's a service, I think, that's sold -- you buy
17 this program and you incorporate it into and it
18 basically gives you the location of the banks
19 and you can geographically say, if he lives
20 here, you know, how many banks in this area and
21 then you can serve restraining notices on those
22 banks.

23 Q. The main criteria, then?

24 A. I think geographic location is the
25 main criteria. Yes, it's one of the main

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1 criteria, um-hum.

2 Q. Now, for the 3500 new judgment
3 accounts you get every year, how many attorneys
4 generally sign those? Is there a range of
5 attorneys? One or two attorneys or --

6 MS. LASTORINO: Objection to form.

7 A. Sign what? You said "sign" what?

8 Q. That's a good question. The
9 income -- the wage execution -- wage
10 garnishments or the income executions. That's
11 the same thing. Let me restart that question.

12 So -- wait. Let me just ask you,
13 Exhibit No. 1, the income execution, it has a
14 form with two attorneys' names underneath.
15 Ronald Ferraro and Olivia DeBellis and then,
16 it's apparently signed by Ronald Ferraro. For
17 that time period, were those the two attorneys
18 that were signing the income executions, the
19 bank restraints?

20 A. Income executions based on this
21 form, yes.

22 Q. So, for that period of time, those
23 two attorneys would be the ones who signed the
24 income executions for the judgment accounts?

25 A. Yes, um-hum.

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1 Q. Are there different attorneys who
2 signed for the information subpoenas or it would
3 be the same attorneys?

4 A. Yes, I believe so.

5 Q. Yes, which one?

6 A. Yes.

7 Q. Yes, they're the same or --

8 A. No, no. They're different
9 attorneys. They're different attorneys.

10 Q. Are there one or two attorneys
11 that do that or do you know?

12 A. I believe Mr. Garbus signs off on
13 some of the restraining notices.

14 Q. So, for the time period at issue
15 here, 2015, I think, it would be Mr. Garbus that
16 would sign most of the bank restraints and it
17 would be Mr. Ferraro or Miss Olivia --

18 A. DeBellis.

19 Q. DeBellis that would sign the wage
20 restraints. Is that right?

21 A. Yes. There might be other
22 attorneys who might also sign the restraining
23 notices from time to time but, you know,
24 usually, we -- in this case, there were two
25 names. It doesn't mean other attorneys couldn't

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1 sign it. I've signed restraining notices,
2 income executions, if necessary.

3 Q. But generally speaking?

4 A. Right, and, you know, in this case
5 Olivia DeBellis didn't sign the income
6 execution. It was Ronald Ferraro who signed the
7 income execution.

8 Q. I'm just trying to find out,
9 generally speaking, in 2015, would it be, Mr.
10 Garbus would be the main person signing the
11 income bank restraints and Mr. Ferraro and Miss
12 DeBellis would be signing the executions?

13 A. I would say, based on the review
14 of this document, yes, um-hum.

15 Q. And would that be the same number
16 of attorneys that would be signing income
17 executions and bank restraints for the last few
18 years?

19 MS. LASTORINO: Please, note my
20 objection in connection with seeking
21 discovery on other matters, over a period
22 of years that Judge Hellerstein also
23 ruled is beyond the scope of discovery.

24 Q. Go ahead.

25 A. I would say yes, you know. There

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1 were always some attorneys who signed whether --
2 in this period of time, it appears to be Mr.
3 Ferraro and Miss DeBellis.

4 Q. But it would be about the same
5 number of attorneys?

6 A. Yes, um-hum.

7 MR. KESHAVARZ: Can I take a quick
8 break?

9 (Whereupon there is a brief
10 recess.)

11 BY MR. KESHAVARZ:

12 Q. So, you talked about the new
13 policy at Forster & Garbus for new accounts that
14 are placed with Forster & Garbus after November
15 2014, that you would check to see if the
16 Judgment creditor forwarded you a copy of the
17 Judgment. Right?

18 A. Yes.

19 Q. And you would also check on
20 eCourts to see if there's an Order to Show Cause
21 filed. Correct?

22 A. Yes.

23 Q. Why don't you do that for existing
24 judgment accounts that you have that were placed
25 prior to November of 2014, such as Mr.

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1 Callender's?

2 MS. LASTORINO: Objection to form.

3 A. Again, I think I've answered that
4 in my prior testimony. You can go back and
5 refer to my answers on the other questions.

6 You've asked the same question now a few times.

7 Q. I apologize. If I'm asking that
8 again, I apologize, but what was the answer or
9 what is the answer?

10 MS. LASTORINO: Objection, as it
11 has been asked and answered.

12 You can answer.

13 THE WITNESS: Can I answer?

14 MS. LASTORINO: For the tenth
15 time.

16 A. Basically, there's no reason to
17 doubt the validity of the Judgment based on the
18 prior proceedings in the particular matters that
19 would require us, under any theory, I believe,
20 to go and check eCourts, for example, as you've
21 stated.

22 Q. Then, why change the policy?

23 A. Again, for better practice and,
24 you know -- I mean there's nothing wrong with
25 always trying to improve yourself and to the

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1 improvement of the firm. We always try to do
2 the best we can and to follow the law and if the
3 law changes, to make changes.

4 Q. Is one concerned that there are
5 too many old judgment accounts that you're
6 collecting on in order to check eCourts on?

7 MS. LASTORINO: Objection to form.

8 A. No. I don't know if that's the
9 reason. Again, I think I've answered the
10 question.

11 Q. Okay. Thank you.

12 So, as to Mr. Callender, the
13 executing on the vacated Judgment, does Forster
14 & Garbus feel like it did anything wrong in
15 issuing the income execution as Exhibit 1?

16 MS. LASTORINO: Objection to form.

17 A. No, I don't believe it feels it
18 did anything wrong when issuing the execution,
19 based upon the knowledge that it had. For
20 example, in 2013, I believe it was -- 2012, I
21 believe it was, December, when Mr. Callender
22 made his complaint to the Department of Consumer
23 Affairs, we sent -- we stopped the collection
24 proceedings at that time, you know, no further
25 asset locating, no further collection, seized

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1 all communication with Mr. Callender until we
2 went back to the client with the DCA complaint.
3 We forwarded the DCA complaint to them for their
4 investigation and subsequently, they reported
5 back to us that the dealt was valid and that we
6 can proceed with collections. There was no
7 reason to doubt, again, that there was anything
8 wrong with the Judgment at that time. The
9 client verified that the debt was due and owing
10 and we proceeded on, you know, subsequently, you
11 know, months afterwards, after the client had
12 given us that information to, again. Seek to
13 recover and collect on the debt.

14 Q. So, the answer is no, Forster &
15 Garbus doesn't believe it did anything wrong in
16 issuing the income execution against Mr.
17 Callender, that's Exhibit 1. Is that right?

18 A. At the time we issued the income
19 execution, we believed we had the right to issue
20 the income execution. That's correct.

21 Q. And if Forster & Garbus had to do
22 it over again, would it do anything differently
23 or do you feel you've followed the proper
24 procedure at that time?

25 MS. LASTORINO: I object to form.

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1 A. I won't answer as to whether or
2 not we followed the proper procedure. I would
3 say that, obviously, if we knew the Judgment had
4 been vacated, we would not have issued the
5 income execution. In fact, our system wouldn't
6 allow us to produce the income execution because
7 had known the Judgment was vacated, we would
8 have removed the Judgment information from the
9 system and not been able to do any kind of
10 post-judgment enforcement.

11 Q. When you got the dispute from Mr.
12 Callender about fraud, why didn't you look at
13 the court file?

14 A. Because there was no reason to
15 look at the court file. Mr. Callender was not
16 alleging any issue with a Judgment or that he
17 wasn't -- he was alleging fraud. He was saying,
18 "I never had a Discover account." So, if he
19 never had a Discover account -- we went back to
20 Discover and Discover said, "Yes, he did have a
21 Discover account."

22 Q. But Discover asked you to take a
23 look at the court file. Right?

24 MS. LASTORINO: Objection.

25 A. I'm sorry. What?

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1 Q. Didn't Discover ask you to take a
2 look at the court file?

3 MS. LASTORINO: Object to form.

4 A. How would I know what Discover
5 did?

6 Q. Well, it's in the collection notes
7 but if Discover asked you to take a look at the
8 court file, do you believe Forster & Garbus
9 should have done that?

10 MS. LASTORINO: Objection to form.

11 A. I have no idea what you're talking
12 about that Discover told us to do.

13 Q. If Discover told Forster & Garbus,
14 when Forster & Garbus sent the dispute letter
15 from Mr. Callender, Forster & Garbus -- if
16 Discover told Forster & Garbus to go ahead and
17 pull the court file, if they did that -- if they
18 said that, is that a responsibility for Forster
19 & Garbus to do?

20 MS. LASTORINO: Objection to form.

21 He already said he doesn't know. If you
22 want to show him a document, show him a
23 document.

24 MR. KESHAVARZ: I'm just --
25 please, mark that as an exhibit.

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3 Q. Please, review Exhibit P-6 and let
4 us know when you're done.

5 (Whereupon the witness reviews the
6 document.)

7 A. I 'm done.

8 Q. Are those Forster & Garbus's
9 collection notes regarding the judgment account
10 it was collecting on Mr. Callender?

11 A. Yes.

12 Q. There's 75 pages of documents that
13 I received last week. Let me ask you, if you
14 turn your attention to page 113. If you read
15 112 or 113, just read those to yourself and let
16 me know when you're done, please.

17 (Whereupon the witness reviews the
18 document.)

19 Q. Are you done? I'm sorry. Take
20 your time.

21 A. Yeah, I'm done.

22 Q. So, looking at page 113, was
23 Discover, in fact, asking Forster & Garbus to
24 send it any answer filed, any internal notes and
25 the Judgment, if applicable, and all other

JOEL D. LEIDERMAN, ESQ. on 09/28/2016

1 documents pertaining to the account?

2 MS. LASTORINO: Objection to form.

3 Q. Discover asked Forster & Garbus to
4 do that. Correct?

5 MS. LASTORINO: Objection to form.

6 A. The notes speak for themselves.

7 Q. And you believe that to be true?

8 A. If that's what it says.

9 Q. And you believe those notes to be
10 accurate in that regard?

11 A. In terms of what they requested,
12 it says. It says, "copies of any answers --"
13 it says what it says. "All internal notes,
14 Judgment."

15 Q. So, why didn't Forster -- strike
16 that.

17 If Discover was asking Forster &
18 Garbus to go and get a copy of the answer that
19 was in the Court file, a copy of the Judgment
20 and other documents, why didn't Forster & Garbus
21 do that?

22 MS. LASTORINO: Objection to form.

23 A. I think it's because usually --
24 this is, more or less, I believe a form type of
25 response from the client. Now, generally, if an

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1 Answer was filed, we'd have a copy in our
2 office. Now, we provide them with what we have
3 scanned to the computer, the Summons, the
4 Complaint, the Answer, the Judgment, if we
5 obtained it. In this case, this was referred
6 already as a judgment file and he was not -- Mr.
7 Callender was alleging fraud or false identity.
8 Okay. I think on Forster & Garbus's part, that
9 we provided them with information and they
10 investigated it from a fraud aspect. So, they
11 looked at the application. They looked at the
12 signatures. They looked at the addresses. They
13 looked at the billing statements and responded
14 accordingly.

15 Q. So, if a consumer were sued and
16 they claimed that the account was fraudulent,
17 that would be an affirmative defense they
18 usually raise in their Answer. Right? "This is
19 not my account. This is fraudulent." Right?

20 MS. LASTORINO: Object to the
21 form.

22 A. I guess.

23 Q. So, if Mr. Callender was claiming
24 fraud and Discover said Forster & Garbus,
25 please, look at the Judgment, if there is one,

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1 and look at the Answer. One reason to look at
2 the Answer would be to see if Mr. Callender
3 filed an Answer that alleged fraud. Right?

4 MS. LASTORINO: Objection to form.

5 A. I can only speculate.

6 Q. I mean that's what Discover wanted
7 Forster & Garbus to do. Right?

8 A. I don't really know. I'm not
9 Discover. So, I really don't know what they
10 wanted, you know. As I said, any time there's a
11 false dispute or false identity dispute, they
12 will say "send us your documents." That's what
13 we do. We send the documents that we have in
14 our file. There was nothing to indicate, in
15 this particular complaint, that there was
16 anything wrong with the Judgment. He was
17 claiming that, you know, it wasn't him; that he
18 never had a Discover card.

19 Q. Well, let me ask you this because
20 you're the corporate representative of Forster &
21 Garbus. You're all Forster & Garbus
22 encapsulated into one person for purposes of
23 this case and this trial. So, I'm just trying
24 to nail down Forster & Garbus's position as to
25 this issue.

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1 So, it's Forster & Garbus's
2 position now that if Discover says it wants
3 Forster & Garbus to look at the Answer,
4 including any allegations of fraud in the Answer
5 and the Judgment, is it Forster & Garbus's
6 position that it should have done that or it
7 should not have done that?

8 MS. LASTORINO: Objection to form.

9 You're characterizing it in the way you
10 want to characterize it.

11 MR. KESHAVARZ: Objection to the
12 form. That's fine. You can object to
13 the form.

14 You can answer the question.

15 A. There was no Answer in this file.
16 So, there was nothing to look at in terms of an
17 Answer. There was a Judgment since 2005. The
18 Judgment is res judicata on the issue of
19 liability and the responsibility to pay the
20 Judgment. So, there was no answer, okay. There
21 wouldn't -- you know, had there been an Answer,
22 it wouldn't have been a Default Judgment and so,
23 there was no Answer to respond to the Complaint.
24 There was no Answer.

25 Q. But when you were executing on the

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1 Judgment and during this fraud dispute, you
2 never looked on eCourts to see if there was an
3 Answer filed. Right?

4 MS. LASTORINO: Objection to form.

5 A. Correct.

6 Q. And you never sent someone to the
7 courthouse to see if an Answer was ever filed.
8 Correct?

9 A. Correct.

10 Q. Because if an Answer was filed in
11 the consumer-alleged fraud, that's something you
12 would believe Discover would want to know.
13 Right?

14 MS. LASTORINO: Objection to form.

15 A. Again, there was no indication,
16 based on the fact that there was a Judgment,
17 that that was an Answer on file.

18 Q. Well, how do you do that? I mean
19 people have judgments against them after filing
20 an Answer by losing in court. Right? Is that
21 true?

22 A. I guess.

23 Q. So, when Forster & Garbus
24 continued to execute, continued to collect on
25 the Judgment, it didn't know whether Mr.

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1 Callender had filed an Answer or not. Right?

2 MS. LASTORINO: Objection to form.

3 A. I guess that would be correct.

4 Q. And so, they didn't know he filed
5 an Answer and the Answer said "This is indeed
6 fraud." Forster & Garbus didn't know that when
7 it executed on his wages. Right?

8 A. Just give me a second.

9 Q. Take your time.

10 (Whereupon the witness reviews
11 documents.)

12 A. I don't think I can answer that
13 question at this time, without further review of
14 certain documents, to answer that effectively.

15 MR. KESHAVARZ: Can you read what
16 my last question was?

17 (Whereupon the last question is
18 read back by the reporter.)

19 Q. Let me ask you, sir, when Discover
20 asked you to check for the Answer in the court
21 file to see if there was even a Judgment, why
22 didn't Forster -- strike that.

23 Forster & Garbus should have, in
24 fact, done that. Right?

25 MS. LASTORINO: Objection to form

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1 and your characterization of what
2 Discover said.

3 MR. KESHAVARZ: Preserved as an
4 objection.

5 Go ahead.

6 A. Again, I also -- you know, you're
7 putting certain language in there, which I don't
8 agree to. You gave me a date of the summons
9 before and I don't remember what that date was.
10 Could you provide me with the date of that
11 Summons and Judgment?

12 Q. The summons on the collection
13 lawsuit?

14 A. Yes.

15 Q. And the date of the Judgment?

16 A. That is correct.

17 Q. Well, let me -- that's a good
18 point. So, when Forster & Garbus collects on
19 judgment accounts such as Mr. Callender, it
20 doesn't get it, certainly before November 2014,
21 it doesn't get a copy of the Judgment?

22 A. Well, it did in many cases, as I
23 testified before.

24 Q. In some cases it did?

25 A. Oh, yes, it did, in many cases,

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1 well before 2014.

2 Q. Forster & Garbus didn't require
3 the Judgment creditor to produce a copy of the
4 Judgment that it wanted Forster & Garbus to
5 execute upon. Right?

6 A. There was certain cases where we
7 did not have copies of the judgments and we
8 would still continue with collection efforts.

9 Q. Because you didn't requirement the
10 copy of the Judgment prior to executing. Right?

11 MS. LASTORINO: Objection to form.

12 A. I guess.

13 Q. Okay. So, as the collection law
14 firm, on behalf of the judgment creditor like
15 Discover, you provide your best legal advice and
16 opinion to Judgment creditors like Discover.
17 Correct?

18 MS. LASTORINO: Objection to form.

19 A. We provide them with information,
20 sure.

21 Q. And you provide an independent
22 legal analysis and termination as to the
23 collection of the putative judgments that they
24 want to you collect. Right?

25 MS. LASTORINO: Objection to form.

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1 A. Yes, to a certain extent, you
2 know, if there was -- certainly, as attorneys,
3 we have to act as attorneys and we have a, you
4 know --

5 Q. You have a duty?

6 A. Duty of responsibility, sure.

7 Q. And that duty is to find out
8 whether the facts and circumstances would
9 warrant the execution on alleged judgments, as
10 Mr. Callender. Right?

11 MS. LASTORINO: Objection to form.

12 Q. That's what your obligations?

13 A. And that obligation can be filled
14 in many ways, as I previously testified.

15 Q. But let me ask you this: Just
16 looking at exhibit --

17 A. P-6? Is that what it is?

18 Q. Yes, Exhibit 6, page FG113. That
19 is dated -- those communications are dated
20 December 28, 2012. Correct?

21 A. Yes, um-hum.

22 Q. So, given what -- strike that.

23 And the information under the memo
24 section, those are -- that's what Discover is
25 telling Forster & Garbus. Correct?

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1 A. Yes.

2 Q. So, when it says on page FG113,
3 for December 28, 2012, "Also, please, include
4 copies of any Answer filed, all internal notes
5 and Judgment, if applicable, and all other
6 documents," should Forster & Garbus have checked
7 the Court file at that point?

8 MS. LASTORINO: Objection to form.

9 A. I guess that's the question to ask
10 the Judge and the jury.

11 Q. And as the attorney for Forster &
12 Garbus, is it Forster & Garbus's position that
13 Forster & Garbus should have checked the Court
14 file on December 28, 2012, when Discover asked
15 Forster & Garbus to "please, include copies of
16 any Answer filed, all internal notes, judgments,
17 if applicable, and all other documents"?

18 A. I believe, again, as I said
19 before, this is a Discover request, which is --
20 you know, everything is through a computer.
21 Everything is coded. So, there's a coded
22 message. That doesn't necessarily mean that in
23 every case you have to respond to everything
24 that is in this file. So, in this case, this is
25 a Judgment that at that point, was almost 10

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1 years old and that Discover placed with us as a
2 judgment file. As far as I know, and this is
3 why I asked you for the dates before, there was
4 no Answer filed in the original action; that
5 this was a Default Judgment that was sent to us.
6 So, and the Complaint did not allege anything
7 about the Judgment or state that he filed an
8 Answer. He said he doesn't have a Discover card
9 and so, the investigation centered on whether or
10 not he had a Discover card and in this
11 particular case, we relied on the information
12 that Discover came back to us and said "Yes, in
13 fact, he did have a Discover card. This is his
14 card." I don't think there's been, you know --
15 withdraw that.

16 Based on that, we went forward.

17 MR. KESHAVARZ: Objection to the
18 nonresponsive part of that answer.

19 MS. LASTORINO: And I object to
20 his characterization of it being
21 nonresponsive.

22 Q. You said "Default Judgment."
23 Forster & Garbus had no idea if the Judgment was
24 entered by default or not. Right?

25 MS. LASTORINO: Objection to form.

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1 A. And I requested that I had to see
2 other documents.

3 Q. Well, my question was on December
4 28, 2012, is it Forster & Garbus's position that
5 it should have checked the Court file; and on
6 December -- on that date, December 2012, Forster
7 & Garbus didn't know if it was a Default
8 Judgment or not. Correct?

9 A. No. I said I need more
10 information. I need to look at other documents.

11 Q. If you look at -- I'm worry. Were
12 you done?

13 A. I'm done.

14 Q. Okay. If you look at Exhibit 6,
15 page FG77?

16 A. I'm sorry. FG77?

17 Q. Yes.

18 A. Right, um-hum.

19 Q. It says that there's been a
20 Judgment entered. Correct?

21 A. Yes.

22 Q. Right?

23 A. Yes, it does say that.

24 Q. There's no indication whether the
25 Judgment against Mr. Callender was a Default

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1 Judgment. Correct?

2 A. Not at that place, no.

3 Q. At what?

4 A. Not on that place in the notes,
5 um-hum.

6 Q. All right. The evidence that
7 Forster & Garbus had in its possession, custody
8 and control, in December 2012, Forster & Garbus
9 did not know whether Judgment was entered by
10 default or not. Correct?

11 MS. LASTORINO: Objection to form.

12 A. And again, as I have stated now,
13 on two or three previous occasions, there are
14 other documents that I could look at and then I
15 can perhaps answer that question as to whether
16 or not it was a default.

17 Q. What other documents would you
18 look at?

19 A. We've produced -- I'd have to look
20 at the -- and I think we -- I'd have to look at
21 the -- what is it? The F-9 notes that you
22 provided?

23 MS. LASTORINO: Um-hum.

24 A. The F-9 notes and there's another
25 screen I could look at and based on that --

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1 well, you gave me the dates. So, if you give me
2 the dates, I can respond. Tell me the date the
3 Summons was served and the date the Judgment was
4 entered and I can explain my answer.

5 Q. Well, I'm just going on what
6 Forster & Garbus knew on December 2012?

7 A. Well, you don't know what I knew
8 until you give me that information because I
9 have other screens and if you give me those
10 dates, which I can look up or if you can just
11 give them to me, I will give you an explanation.
12 How does that sound?

13 Q. Would that be a date that would be
14 listed on the document production?

15 A. You said it before. You opened up
16 earlier this morning and you said, "the Summons
17 was served" such and such date and "the Judgment
18 was entered on" such and such a date. You
19 provided that information this morning. I
20 didn't write it down and I don't remember, but
21 you had the information. You gave it to me.

22 Q. I think you're talking about the
23 date the Francis complaint was filed for Forster
24 & Garbus's executing on the vacated Judgment.

25 A. No. I thought you mentioned it in

JOEL D. LEIDERMAN, ESQ. on 09/28/2016

1 this case.

2 Q. But, in any event --

3 MS. LASTORINO: Let him finish.

4 A. All right. So, this is where --

5 MS. LASTORINO: I don't think
6 there's a question pending.

7 Q. Go ahead.

8 A. No. In other words, by the date
9 of the Summons versus the date of the Judgment,
10 I can tell whether it was a Default Judgment.

11 Q. All right. On December 2012,
12 Discover asked Forster & Garbus to determine if
13 there was even a Judgment. Right?

14 MS. LASTORINO: Objection to form.

15 A. You're speculating as to what that
16 wording means.

17 Q. What does it mean to you?

18 A. For example, as I said, this was a
19 form -- every time there was a dispute, they
20 request this information. So, if there was a
21 placement by Discover Bank where Forster &
22 Garbus had obtained the Judgment, then Discover
23 may not have had a copy and would want us to
24 produce a copy. They generally want us to
25 produce what we have in our file; and when I say

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1 "our file," the documents that was scanned to
2 our file and that have been provided to you in
3 discovery. So, if they wanted another copy of
4 the Judgment, we would provide them with another
5 copy of the Judgment at that point. This was a
6 placement where the client had already referred
7 it to us as a judgment account.

8 Q. But they never provided you with a
9 Judgment?

10 A. No. Doesn't mean they didn't have
11 it. Just means they didn't provide it to us.

12 Q. When they said they want you to
13 include a copy of a Judgment, if applicable,
14 it's Forster & Garbus's position that that does
15 not mean Discover wanted you to get a copy of
16 the Judgment. Is that --

17 MS. LASTORINO: Again, objection
18 to form.

19 Q. Is that Forster & Garbus's
20 position?

21 A. I wouldn't say "position." It's
22 what is and didn't happen. Did we provide a
23 copy of the Judgment? No. That's the answer.
24 I'm not going to say "position," "not position,"
25 "position," "not position." Ask a question.

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1 "Did we provide a copy of the Judgment?" The
2 answer is we didn't provide a copy of the
3 Judgment at that time.

4 Q. Is it Forster & Garbus's position
5 that if Mr. Callender had filed an Answer, even
6 alleging fraud, that as long as there was a
7 Judgment, it was immaterial to Forster & Garbus
8 as to whether it could execute on the Judgment,
9 that the Answer contained fraud allegation?

10 MS. LASTORINO: Objection to form
11 and almost incomprehensible, that
12 question.

13 A. Well, again, I don't think there
14 was, you know, any kind of thought process along
15 that basis but, hypothetically, if an Answer was
16 filed and it alleged fraud and if a Judgment was
17 entered, then that fraud claim was denied
18 because the affirmative defense would have been
19 dismissed or a Judgment would not have been
20 allowed; and, therefore, his subsequent fraud
21 claim would have been resolved in the court, but
22 we still probably would have referred it as a
23 dispute to the client, in any event, because
24 he's now realleging that, you know, and -- but
25 in any event, if there was a Judgment entered

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1 after a fraud in an Answer -- a judgment is a
2 judgment is a judgment. When I lecture and I
3 give examples. I say whether it's a judgment
4 based on default, whether it's a judgment based
5 on the merits or whether it's a judgment based
6 on the stipulations, it's a judgment and can be
7 enforced under Article 52 if the CPLR.

8 Q. So, it's Forster & Garbus's
9 position that even if there was fraud and a
10 fraud allegation it had no problem executing on
11 that Judgment. Right?

12 MS. LASTORINO: Objection to form.
13 You're recharacterizing testimony. He
14 answered the question.

15 A. I answered the question I think
16 relatively well.

17 MS. LASTORINO: Don't try to
18 change his testimony.

19 MR. KESHAVARZ: I'm asking him a
20 question --

21 MS. LASTORINO: You're
22 recharacterizing his testimony.

23 MR. KESHAVARZ: -- and asking if
24 he agrees with it.

25 A. If there was a judgment, whether

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1 there was a fraud allegation, whether there was
2 a statute of limitations allegation, whether or
3 not there was -- you know, denials are put in
4 answers all the time. Affirmative defenses are
5 put in answers all the time and after the Court
6 ruling, whether by Summary Judgment or trial or
7 arbitration or whatever, if there's a Judgment,
8 there's a Judgment and it doesn't matter at that
9 point. It's res judicata on the issue of his
10 liability and there's nothing to indicate that
11 Mr. Callender did, in fact, file an Answer in
12 the original Complaint.

13 Q. Yeah but you didn't -- there's
14 no -- but Forster & Garbus never checked.
15 Right?

16 A. Right, but again --

17 Q. Just tell me if it's Forster &
18 Garbus's position whether this a true statement.
19 By "attorney," I going to mean Forster & Garbus.
20 Does Forster & Garbus warrant to
21 Discover that it will exercise reasonable care
22 and best efforts to attempt to collect a
23 judgment account, as to Mr. Callender?

24 MS. LASTORINO: Objection to form
25 as to whether something is a true

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1 statement. Why don't you ask him a
2 question.

3 MR. KESHAVARZ: That was the
4 question.

5 MS. LASTORINO: It wasn't a proper
6 question.

7 A. Yeah. Would you repeat that?
8 That was a little confusing to me.

9 Q. That's fine.

10 A. Because you put it in such a way,
11 is it our position that -- so, you know,
12 let's --

13 MS. LASTORINO: Let him ask the
14 question again.

15 A. Ask the question again, please.

16 MS. LASTORINO: Are you going to
17 give him the benefit of what you're
18 reading from? Do you want to show him
19 something?

20 (Whereupon there is an
21 off-the-record discussion.)

22 MS. LASTORINO: Okay. Then
23 explain that to him.

24 He wants to clarify something on
25 one of your earlier questions.

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1 Q. Go ahead.

2 A. Remember when I asked you for the
3 dates. I knew there were dates.

4 MS. LASTORINO: He just needed his
5 recollection refreshed.

6 A. So now, in looking at P-2, okay,
7 the eCourts information, which shows that the
8 date of the filing of the Summons and Complaint
9 was July 27, 2005 and it shows the disposition
10 date of 12/21/2005, which I believe is the date
11 of the Judgment. It would be impossible in the
12 Civil Court of the City of New York, County of
13 New York, to obtain a Judgment on the merits in
14 that period of time. It had to have been a
15 Default Judgment. There's no way that this
16 court could enter a Judgment in that short
17 period.

18 Q. So, are you saying that when
19 Discover told Forster & Garbus, in December of
20 2012, to get a copy of the Answer, that Forster
21 & Garbus should have looked on eCourts? Is that
22 what you're saying?

23 A. No, I'm not saying that. I'm just
24 saying that this appears to be a Default
25 Judgment.

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1 Q. Because now you're looking on
2 eCourts. Right?

3 A. Yes.

4 Q. But if you were looking on eCourts
5 this whole time, then you would have never been
6 executing on this vacated Judgment. Right?

7 MS. LASTORINO: Objection to form.

8 A. And again, we have --

9 Q. Is that right?

10 A. If we had checked eCourts but I
11 testified before as to that.

12 MR. KESHAVARZ: If you can mark
13 this, please.

14 (Whereupon P-7, sections of the
15 Discover Retainer Agreement, is marked
16 for identification.)

17 Q. I'm showing you what's been marked
18 as Plaintiff's Exhibit 7. It's sections of the
19 Discover Retainer Agreement with Forster &
20 Garbus. Discover produced the sections of the
21 Retainer Agreement. It stated, I believe, the
22 obligations of Forster & Garbus in collecting on
23 Discover accounts. So, I want you to review it
24 but I'm going to ask you a question on page
25 Callender 220, top paragraph. For the record,

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1 Plaintiff's Exhibit 7 are pages 216 Callender to
2 Callender 220. So, if you could review the
3 document, then I'm going to point to the top
4 paragraph that starts on page 220.

5 A. Page what? 220?

6 Q. Yes, Bates Stamp 220, top
7 paragraph. If you can read that paragraph in
8 particular and let me know when you're done.

9 A. Starting with --

10 Q. The top paragraph on page
11 Callender 220.

12 A. "Laws, License and Requirements"?

13 Q. Correct.

14 A. "And any other --" you want me to
15 read this whole thing?

16 Q. Well, just read it to yourself.

17 A. Oh, read it to myself, yes.

18 (Whereupon the witness reads the
19 document.)

20 A. Okay. I've read it.

21 MS. LASTORINO: Which paragraph?

22 THE WITNESS: This part.

23 MS. LASTORINO: Okay.

24 Q. So, it states -- tell me if I'm
25 reading this correctly. "Attorney further

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1 warrants that it shall exercise reasonable care
2 and best efforts in attempting to collect
3 accounts." Did I read that correctly?

4 MS. LASTORINO: The document
5 speaks for itself.

6 Q. Did I read it correctly?

7 A. Yes.

8 Q. And does Forster & Garbus in fact
9 use, exercise reasonable care and best efforts
10 in attempting to collect Discover accounts?

11 A. Absolutely.

12 Q. And it goes that -- goes on to say
13 that Forster & Garbus shall not engage in any
14 collection or judicial enforcement action which
15 may be deemed unfair, abusive, deceptive or
16 harassing. Is that correct?

17 A. That's what it says.

18 Q. And Forster & Garbus in fact --
19 well, let me ask you this: Do you believe
20 executing on my client's wages, when there was
21 no Judgment, in Forster & Garbus's opinion, does
22 it believe that that's unfair, abusive,
23 deceptive or harassing?

24 MS. LASTORINO: Objection to form.

25 A. At the time we issued the income

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1 execution, I believe we were not unfair, not
2 abusive, not deceptive or not harassing, okay,
3 and that we were complying with the directives
4 of Discover Bank.

5 Q. Do you think it was unfair to Mr.
6 Callender to execute on a vacated Judgment,
7 regardless of your knowledge?

8 MS. LASTORINO: Objection to form.
9 Regardless of his knowledge?

10 Q. For Mr. Callender, what you know
11 is not the issue. So, when it says here that
12 you shall not engage in unfair conduct, do you
13 think executing on a vacated Judgment to Mr.
14 Callender is unfair or do you not believe that's
15 unfair?

16 MS. LASTORINO: Objection to form.
17 A. I would imagine from Mr.

18 Callender's point of view, it would be --

19 MS. LASTORINO: Don't speculate as
20 to the opine on someone else's subjective
21 belief. What kind of proper question is
22 that?

23 MR. KESHAVARZ: Don't instruct
24 your witness.

25 MS. LASTORINO: Your client could

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1 testify as to that.

2 MR. KESHAVARZ: Object to form.

3 He answered the question, so it's fine.

4 MS. LASTORINO: He said --

5 MR. KESHAVARZ: No. Thank you.

6 Q. Going on to the next sentence.

7 "DBSC." That's basically Discover. Right?

8 A. Basically, yes.

9 Q. So, "Attorney acknowledges that
10 Discover is relying upon the experience of the
11 attorney, Forster & Garbus, in regard to the
12 matters assigned to it." Does Forster & Garbus,
13 in fact, acknowledge that?

14 A. By signing the retainer?

15 Q. Is it Forster & Garbus's position
16 today that Discover is relying upon the
17 expertise of Forster & Garbus in the collecting
18 of accounts such as the vacated Judgment?

19 MS. LASTORINO: Objection to form
20 and again, you're asking to opine as to
21 what another entity is relying on.

22 MR. KESHAVARZ: Don't instruct
23 your witness.

24 MS. LASTORINO: I'm not.

25 MR. KESHAVARZ: Either object to

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1 form or not and that's all you're
2 admitted to do.

3 MS. LASTORINO: That's the basis
4 of the objection.

5 MR. KESHAVARZ: That's all you can
6 say.

7 You may answer.

8 A. And basically, again, you know, it
9 says what it says in there and if we signed off
10 on this retainer, then the language speaks for
11 itself.

12 Q. So, it's Forster & Garbus's
13 position that Discover is relying on your
14 representations, for example, on whether the
15 Judgment is vacated or not?

16 A. Whether they actually are or not,
17 I don't know, in this particular case.

18 Q. But they're supposed to?

19 MS. LASTORINO: Objection to form.

20 A. Well, I don't know what their
21 internal practices are.

22 Q. Okay. And it goes on to say that
23 "Discover expects of attorney, Forster & Garbus,
24 to proactively utilize its expertise with regard
25 to matters in this paragraph, whether

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1 specifically directed by Discover or not." Is
2 that correct?

3 A. Where are you reading that? I
4 don't see that.

5 Q. The last sentence.

6 MS. LASTORINO: Last sentence
7 where?

8 MR. KESHAVARZ: First paragraph,
9 page 220. I'm substituting the word --
10 when it says, "attorney," it means
11 Forster & Garbus. Right? And DBSC is
12 Discover. So, I'm just swapping those --

13 A. So, you're saying "DBSC expects
14 attorney to proactively utilize its expertise"?
15 Is that the sentence you're referring to?

16 Q. Yes.

17 A. Okay.

18 Q. So, for Mr. Callender and all
19 judgment accounts and all accounts from
20 Discover, Forster & Garbus is supposed to
21 proactively utilize its expertise regarding the
22 collection of that account. Right?

23 MS. LASTORINO: Objection to form.

24 A. And again, I'll just go by the
25 wording. It says what it says.

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1 Q. And that's your responsibility.

2 Right? Forster & Garbus's responsibility?

3 MS. LASTORINO: Objection to form.

4 A. It says what it says.

5 Q. The answer is yes? Is the answer
6 yes?

7 A. Okay.

8 Q. Is the answer yes?

9 A. Yes, I guess the answer is yes,
10 pursuant to the retainer.

11 Q. Okay. And it's required --

12 Forster & Garbus is required to do that
13 regardless if Discover specifically says that or
14 not. Right?

15 A. That's what it says.

16 Q. So, is it Forster & Garbus's
17 position that despite its contractual
18 requirement to utilize its expertise
19 proactively, that it still was not under any
20 obligation to check eCourts to see whether the
21 ten-year-old Judgment against Mr. Callender was
22 vacated?

23 MS. LASTORINO: Objection to form.

24 A. Absolutely.

25 Q. Absolutely?

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1 A. Absolutely.

2 MR. KESHAVARZ: Can you read the
3 first part of the question?

4 (Whereupon the referenced question
5 is read back by the reporter.)

6 Q. And by "absolutely," you mean
7 absolutely not required to check eCourts.
8 Correct?

9 A. Absolutely.

10 Q. Absolutely not required to check
11 eCourts. Right?

12 A. Absolutely -- yes.

13 Q. Thank you. So, we have -- the
14 Complaint makes a request for punitive damages.
15 One of the pattern jury charge questions on
16 punitive damages is the income assets, relative
17 financial positions of the parties.

18 MS. LASTORINO: Is this a
19 question?

20 MR. KESHAVARZ: Can I finish?

21 MS. LASTORINO: Go ahead.

22 Q. So, let me ask you, what is the
23 income of Forster & Garbus, if you know?

24 MS. LASTORINO: Objection.

25 And you don't have to answer that.

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1 Q. Do you know what the answer to the
2 question is?

3 MS. LASTORINO: You're asking if
4 he knows the answer? Because I'm not --

5 Q. Do you know the answer?

6 MS. LASTORINO: Objection. The
7 objection is, it so far exceeds the scope
8 of discovery in this case. Just mark it
9 for a ruling.

10 MR. KESHAVARZ: Except that it's
11 part of the pattern jury charge.

12 MS. LASTORINO: I don't care what
13 you're saying the pattern jury charge
14 says. It exceeds discovery and he's not
15 going to answer that. This is not a
16 class action.

17 MR. KESHAVARZ: I know but the
18 punitive damage question allows and
19 requires a jury to consider the relative
20 financial positions of the parties, the
21 income and the assets.

22 MS. LASTORINO: I'm directing him
23 not to answer based on, really, like
24 Judge Hellerstein said, "seeking to swat
25 a fly with a howitzer." I'm not going to

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1 allow him to answer that. It is not
2 relevant to this case. It far exceeds
3 discovery. This is not an class action
4 where net worth of the law firm is a
5 factor.

6 MR. KESHAVARZ: Well, let me take
7 it one at a time.

8 Q. First of all, do you know?

9 MS. LASTORINO: It's irrelevant if
10 he knows or not because I'm telling him
11 that he's not answering. If you want to
12 make a motion, let's make a motion.
13 Let's get the Court on the phone right
14 now.

15 MR. KESHAVARZ: Are you
16 instructing him not to answer whether he
17 knows what Forster & Garbus's income is?
18 Are you instructing him not to answer
19 whether he knows?

20 MS. LASTORINO: You could answer
21 if you know or if you don't know.

22 And then, he's not answering what
23 it is. So, what difference does it make?

24 Q. One step at a time. Do you know
25 what the Forster & Garbus -- the law firm. It's

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1 an LLP?

2 A. It's an LLP, yes.

3 MS. LASTORINO: Actually, you know
4 what? I am directing him not to answer.

5 It's not relevant.

6 MR. KESHAVARZ: Whether he knows?

7 MS. LASTORINO: Right. It's not
8 relevant. This is not a class action.
9 This far exceeds the scope of discovery,
10 Ahmad. You know that. The income the
11 law firm? No.

12 MR. KESHAVARZ: Are you disputing
13 that the income and worth is not a factor
14 for punitive damage question?

15 MS. LASTORINO: You're assuming,
16 first of all, that there's punitive
17 damages and punitive damages are not
18 dependent on the net worth of the firm.
19 I'm going to object to that.

20 MR. KESHAVARZ: Are you disputing
21 that's one of the factors for the jury to
22 consider?

23 MS. LASTORINO: I'm not going to
24 agrees as to what you're reading from.
25 It's also a legal question. I mean

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1 you're asking him to give you an answer
2 on something that you're saying is a
3 pattern jury instruction. It's
4 inappropriate. It exceeds the scope of
5 discovery.

6 MR. KESHAVARZ: You're not going
7 to let him testify as to even whether he
8 knows the net worth, the income, the
9 assets of Forster & Garbus are? Is that
10 what you're saying?

11 MS. LASTORINO: I will let him
12 answer if he knows or doesn't know and
13 that's it. I'm not allowing him to
14 answer anything after that. If he even
15 knows. Maybe he doesn't.

16 MR. KESHAVARZ: Maybe we'll find
17 out.

18 Q. Do you know what the income of
19 Forster & Garbus is?

20 A. No.

21 Q. Do you have any idea what the
22 income is? No idea --

23 MS. LASTORINO: He answered no.
24 How many times are you going to ask that
25 question? I let you ask that question if

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1 he knew or he didn't know. He said,

2 "no." That's the answer.

3 Q. Do you have any idea what it is
4 for the last year?

5 MS. LASTORINO: Objection.

6 A. No.

7 Q. Do you have any idea what it is
8 this year?

9 MS. LASTORINO: Objection.

10 A. Certainly not.

11 Q. Any of the prior years?

12 MS. LASTORINO: Objection.

13 A. Again, I don't know the income.

14 MS. LASTORINO: It's yes or no.

15 You answered it five times.

16 A. I'm not a partner of the firm.

17 Q. Do you know what the face value of
18 the accounts that Forster & Garbus attempts to
19 collect are?

20 MS. LASTORINO: Objection.

21 Q. You can answer.

22 A. No.

23 Q. Do you know what the face value of
24 the judgment accounts at Forster & Garbus --

25 MS. LASTORINO: I'm going to

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1 object to this. Let's get the Judge on
2 the phone.

3 MR. KESHAVARZ: About whether he
4 even knows the face value of these
5 accounts?

6 MS. LASTORINO: What else are you
7 going to go -- he's saying that he
8 doesn't know. Are you going to go
9 through every single --

10 MR. KESHAVARZ: Well, let me
11 finish. Let me finish asking the
12 question. Let him answer. If you stop
13 interrupting, we'll get through this much
14 faster.

15 MS. LASTORINO: Well, start asking
16 appropriate questions.

17 Q. All right. You don't know the
18 face value of all the portfolios that Forster &
19 Garbus attempts to collect on. Is that right?

20 A. That's correct.

21 Q. Do you know what the face value
22 approximately is for the portfolios of judgment
23 accounts that Forster & Garbus attempts to
24 collect on?

25 MS. LASTORINO: Objection.

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1 A. No, I do not.

2 Q. Do you know what the average or
3 range of average face value of the judgment
4 accounts that Forster & Garbus collects is?

5 MS. LASTORINO: Objection.

6 A. I don't even understand that
7 question.

8 Q. Well, that's a perfectly valid
9 response because I asked you to ask me to
10 clarify.

11 So, the face amount of the
12 judgments, for the judgment accounts that
13 Forster & Garbus collects on, do you know what
14 the -- the total amounts of those judgments are?

15 MS. LASTORINO: Objection.

16 A. No. Asked and answered. I said
17 that. No.

18 Q. Do you know what the average value
19 of the judgments are?

20 MS. LASTORINO: Objection. This
21 is really getting abusive now.

22 A. No, I don't.

23 Q. Do you know what the net worth of
24 Forster & Garbus is?

25 MS. LASTORINO: Objection.

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1 You don't have to answer. This is
2 really -- this is really abusive. This
3 is grounds for a motion.

4 MR. KESHAVARZ: I'm asking if he
5 knows. You said, "Yes, he can answer.
6 Yes, he can answer."

7 MS. LASTORINO: But you keep
8 going. You ask some questions and then
9 that's it. I mean you can spend the next
10 hour asking these questions. He doesn't
11 know. That's inappropriate, anyway,
12 because if he knew, where is it leading
13 towards? It's not discoverable.

14 A. And I don't know the answer to it.

15 Q. So, let me just make sure we're
16 clear because you seem to be -- I can literally
17 see the gears moving in your head, but putting
18 that aside --

19 MS. LASTORINO: Which I don't even
20 know what that means.

21 Q. Let me ask you this. Do you know
22 what the net worth of Forster & Garbus is?

23 MS. LASTORINO: You just asked
24 that question.

25 Q. You may answer.

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1 A. I don't know.

2 MS. LASTORINO: That's it. That's
3 it.

4 MR. GARBUS: Is it time to leave?

5 MS. LASTORINO: We're going to
6 call the Court. I'm not going to engage
7 in this anymore.

8 MR. KESHAVARZ: Well, he says he
9 doesn't know.

10 MS. LASTORINO: So, then why do
11 you keep asking him the same question a
12 different way, if he doesn't know?

13 MR. KESHAVARZ: Because income is
14 one thing and assets are another thing.

15 MS. LASTORINO: But he answered
16 everything already. You keep asking him
17 the same question.

18 MR. KESHAVARZ: No. I think I've
19 asked him four different --

20 MS. LASTORINO: You asked the same
21 question. I would move on.

22 Q. How many people work at Forster &
23 Garbus?

24 A. Approximately a hundred and
25 seventy-five.

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1 Q. How many of those are attorneys?

2 A. I believe twelve.

3 Q. Do you know what the payroll is
4 for Forster & Garbus?

5 MS. LASTORINO: Objection.

6 A. No.

7 Q. Okay. Do you know the total
8 number of accounts Forster & Garbus collects on?

9 A. No.

10 Q. Do you know -- Forster & Garbus,
11 the LLP, do you know who the general partner of
12 the LLP is?

13 A. No.

14 Q. Is there a general partner?

15 A. I don't know.

16 Q. All right. Looking at Exhibit No.
17 1, the income execution, do you know if those
18 signatures are physical ink pen and paper
19 signatures or is it a digital signature, if you
20 know?

21 MS. LASTORINO: Objection to
22 classifying it as signatures, plural.

23 Q. You may answer the question.

24 A. These would be original
25 signatures. Then, scanned into the computer, so

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1 that you don't see the ink but these would have
2 been the original scan.

3 Q. Thanks. I was looking at the
4 collection notes and I didn't see anything about
5 sending out the CPLR 5222 notices. Does Forster
6 & Garbus send those out?

7 MS. LASTORINO: Objection to form.

8 Was that a statement or a question?

9 Q. Does Forster & Garbus send those
10 out?

11 MS. LASTORINO: That you didn't
12 see it? You want him to answer if you
13 didn't see something?

14 MR. KESHAVARZ: If you would stop
15 interrupting, this would go so much
16 faster.

17 MS. LASTORINO: If you ask proper
18 questions, I wouldn't have to do this.

19 MR. KESHAVARZ: If you have an
20 objection to the form of the question,
21 you can add them.

22 MS. LASTORINO: I have been,
23 Ahmad, and it's not improving with your
24 questioning. You still ask the same
25 improper questions: Compound, your

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beliefs, someone else's belief. Ask appropriate questions. It would go a lot easier.

(Whereupon there is an off-the-record discussion.)

6 Q. Do you know what a CPLR 5222
7 Notice is?

8 A. Are you talking about the
9 exemption claims? Yes.

10 Q. And what is it?

11 A. Okay. Pursuant to 5222-a of the
12 CPLR, entitled the "Exempt Income Protection
13 Act," you're required, when serving a
14 restraining notice, to serve two copies of the
15 restraining notice to the bank, together with
16 exemption claim forms and a notice to the
17 judgment debtor, a notice regarding exemptions
18 that are allowed by law, such as disability,
19 Social Security, et cetera. Those forms were
20 sent to Banco Popular in accordance with 5222.
21 I think we provided that in discovery.

22 Q. Maybe I'm getting the number wrong
23 of the CPLR because I'm more of federal court
24 practice in there but isn't Forster & Garbus and
25 judgment creditors generally supposed to give a

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1 notice, once a year, to judgment debtors about
2 the exempt assets or is that incorrect?

3 MS. LASTORINO: Objection to form.

4 A. There is a provision for, okay,
5 that. However, the exemption notice, 5222-a
6 provides that you provide a notice of that form
7 and a copy of the -- you can do two things: You
8 can either serve a copy within a year prior or
9 you can serve a copy with the restraining notice
10 within four days of the service of the
11 restrainer notice. CPLR 5222-a provides that
12 the bank serve a copy of the restraining notice
13 and the exemption claim form upon the judgment
14 debtor, so he does get that notice of
15 exemptions.

16 Q. So even, if Forster & Garbus
17 hadn't given notice for say four years, are you
18 saying so long as it gives the notice along with
19 the bank restraint, then it's complied with its
20 obligations?

21 MS. LASTORINO: Objection to form.

22 Q. Is that what you mean?

23 A. Well, that could be an
24 interpretation of what I said.

25 Q. And is that Forster & Garbus's

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1 position?

2 MS. LASTORINO: Objection to form.

3 A. I'm not saying there is a
4 position.

5 Q. All right.

6 A. This is a legal question.

7 Q. Well, let me ask you a factual
8 question because I didn't note in the collection
9 notes any indication that there was a CPLR 5222
10 Notice, other than for the restraints, but I
11 didn't see one that's sent out every year or at
12 all, other than the restraints. Does Forster &
13 Garbus not send out these notices every year?

14 A. No, no. We do. There is a
15 program in effect to do that.

16 Q. You have the collection notes that
17 are Exhibit 6?

18 A. I see. I know, um-hum.

19 Q. Is there anything in there that
20 indicates that these 5222 notices were actually
21 sent to Mr. Callender every year?

22 A. It doesn't have to be sent to Mr.
23 Callender every year unless you're going -- you
24 know, you have a right to either send it to him
25 in advance or within four days of the service of

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1 the restraining notice. That's what the statute
2 says. So, Mr. Callender wasn't served the 5222
3 Notice, other than with the income execution.
4 Is that right?

5 MS. LASTORINO: Objection to form.

6 A. The income execution doesn't
7 require 5222 notices. It's a different section.
8 It's not a bank. There's no exempt assets for
9 your place of business. So, it's not required
10 for the income execution. It's 5231 that's the
11 income execution statute. It's not in there.

12 Q. Well, when was the last time
13 Forster & Garbus gave Mr. Callender a 5222
14 Notice?

15 MS. LASTORINO: Objection to form.

16 A. That notice -- I'm not sure. I
17 don't know. There's nothing in the notes to
18 reflect that.

19 Q. There's nothing in the notes to
20 reflect that?

21 A. No.

22 Q. If the 5222 notices were sent to
23 Mr. Callender, would that be reflected in the
24 collection notes?

25 A. Probably.

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1 Q. But you're saying you don't see
2 any indication of that?

3 A. That is correct.

4 Q. Do you know why that might be?

5 A. Okay. Let me just see.

6 (Whereupon the witness looks
7 through documents.)

8 MR. KESHAVARZ: While you're doing
9 that, I'm going to take a break. Let's
10 go off the record.

11 (Whereupon there is a brief
12 recess.)

13 BY MR. KESHAVARZ:

14 Q. Okay. You were going to answer.
15 What was the last question?

16 (Whereupon the last question is
17 read back by the reporter.)

18 A. No, I don't know the reason.

19 Q. Other than the bank restraint,
20 when Forster & Garbus attempts to collect on
21 judgments, is it Forster & Garbus's position
22 that it's not required to send out a CPLR 5222
23 Notice, if it wasn't a bank restraint?

24 A. It only applies to bank restraints
25 and property executions, a bank execution. It

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1 does not apply to income executions.

2 Q. So, income executions or other
3 attempts to collect on judgments, it's Forster &
4 Garbus's position that it's not required to send
5 out a CPLR 5222 Notice to the consumer, at any
6 point?

7 MS. LASTORINO: Objection to form.

8 A. A 5222 applies to bank restraints
9 and so that section applies to bank restraints,
10 not to income executions. It applies to
11 property executions, under 5232, I believe, and
12 5222 for bank restraints.

13 Q. All right. Well --

14 A. I was just going to say other than
15 there were no other bank restraints on this
16 account.

17 Q. So, for other attempts, other than
18 bank restraints, income executions, collection
19 letters, so forth, is it Forster & Garbus's
20 position that it's not required to send out a
21 5222 Notice, at any point, prior to taking those
22 other steps?

23 MS. LASTORINO: Objection to form.

24 You can answer.

25 A. As to income executions, et

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1 cetera, as far as letters go, you know, we
2 comply with Department of Financial Service
3 rules, which are recently in effect, that
4 provide for an exemption notice. That's the new
5 rules under the Department of Financial Services
6 but this wasn't in effect in 2010, or
7 whatever -- 2009, but we do comply with those
8 recent requirement notices.

11 THE WITNESS: Thank you.

12 MR. KESHAVARZ: All right. Your
13 attorney gets to ask you questions, if
14 she wants.

15 MS. LASTORINO: I have no
16 questions.

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1

C E R T I F I C A T E

2

3 I, Wanda Wilkins, a Certified
4 Court Reporter and Notary Public of the State of
5 New Jersey, certify that the foregoing is a true
6 and accurate transcript of the stenographic
7 notes of the deposition of said witness who was
8 first duly sworn by me, on the date and place
9 hereinbefore set forth.

10

I FURTHER CERTIFY that I am
neither attorney nor counsel for, nor related to
or employed by, any of the parties to the action
in which this deposition was taken, and further
that I am not a relative or employee of any
attorney or counsel employed in this action, nor
am I financially interested in this case.

17

18

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Wanda Wilkins, CCR

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